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THE INDIAN OFFENDER IN MONTANA

By

Edwin L. Hall

B.A., University of Montana, 1968

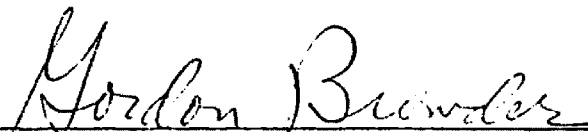
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PREFACE

In 1970 there were approximately 27,130 American Indian residents in the state of Montana.¹ During 1970, fifty-four American Indians were incarcerated in Montana State Prison for felony offenses.² Calculations made from these figures reveal that nearly one Indian out of every 500 Indians in the state of Montana was sentenced to Montana State Prison during the year. The Indian in prison represents approximately 20 to 25 percent of the total inmate population.³ Data from the present study indicates a rapid turnover in the inmate population at Montana State Prison; half of the Indians entering prison will be released within one year and 75 percent will be released within 20 months. In all, 259 individual Indians are included in the study. The 259 Indian offenders are a significant number of offenders who have been through the Montana judicial system, who have experienced the correctional treatment facilities at Deer Lodge, and who have remained, until now, unstudied.

The American Indian is in a strange, complex, and tangled legal status in Montana. The path that leads an Indian to prison is not clear. The Indian in Montana, who was not a citizen until 48 years ago, must currently cope with three legal systems all impinging on him in

¹U.S. Dept. of Commerce; Bureau of the Census, 1970 Census of Population: General Population Characteristics-Montana (Washington: n.n.), table 17.

²Data supplied by Rick Sparks, Board of Pardons.

³Based on personal discussion with prison staff.

varying degrees.¹ The legal tangle surrounding the Indian often ultimately finds an Indian offender placed in a federal institution, in a state institution, or in a tribal facility. The legal network applying to Indians is dependent on "...subject matter, locus and person".² To this study, the jurisdictional situation of the Indian means that certain criteria must be present in an offense for any Indian offender to be processed by Montana's legal system and be found as an inmate in Montana State Prison. The jurisdictional situation of the Indian fixes the locus of judicial activity by which Indians become inmates of Montana State Prison at the state level.

Since it is under state jurisdiction that Indian offenders are processed, this study was able to compare Indians in prison with non-Indians in prison. Both groups have been subjected to the same legal apparatus of the state. Both groups have been processed under the same authority, for the same possible offenses, and both are confined to the same correctional institution. This study asks and seeks to answer, whether Indian offenders in Montana are similar to white offenders in Montana?

The answers to the question are relevant to Montana and the West. Montana, one of the largest states in the Union in area but one of the smaller in population with but 4.8 persons per square mile, is

¹William A. Brophy and Sophie D. Aberle, The Indian: America's Unfinished Business (Norman: University of Oklahoma Press, 1966), p.16.

²Felix S. Cohen, Handbook of Federal Indian Law (Albuquerque: University of New Mexico Press, 1958), p. 358.

representative of rural regions and rural problems of the West.¹ Montana has but one adult penal institution and that facility is aging. Inside the walls of the prison are inmates convicted of crimes in a rural region. This study can be utilized to compare the offender, Indian and non-Indian, to offenders in less rural regions of the nation or to offenders in other similar regions.

From the 1864 exploits of the Plummer Gang and the resultant vigilantism, to a "...judiciary corrupted and legislature overrun by corporate interests...",² to the 1917 lynching in Butte of IWW leader Frank Little, Montana has been raised in a tradition of lawlessness not uncommon to the West. Ruralness, lawlessness and Westernness make Montana representative of a distinct region of the nation and criminals within the region have gone unstudied. This study can help to fill the gulf in the body of knowledge about offenders in the United States.

To supplement to the body of knowledge the present study will do several things. Since the Indian offender has remained unstudied, this study will first describe in general terms the Indian offender in Montana. Accomplishing that task, the Indian offender will be compared by a statistical test of significance to the white offender incarcerated at Montana State Prison.

¹1970 Census of Population: General Population Characteristics-Montana, op. cit., Table 18.

²Michael P. Malone and Richard B. Roeder, The Montana Past: An Anthology (Missoula: University of Montana Press, 1969), p. 349.

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Chapter 1

UNDERSTANDING THE INDIAN OFFENDER

Concern over crime and criminality is growing. Crime is considered to be an outstanding internal problem of the United States and is a salient political issue. Public polls point out continued concern for crime in America.¹ "The report of the President's Commission on Law Enforcement and Administration of Justice, published in 1967, represents an attempt to respond to these endemic fears about ominous trends in modern society."² But studies of crime, or in terms of the present study, an examination of the Indian offender is not simply an examination of the man in prison. It is deviance that needs to be understood.

Deviance is an elusive and changing property which, Erikson writes "...refers to conduct which the people of a group consider so dangerous or embarrassing or irritating that they bring special sanctions to bear against the persons who exhibit it."³ The sanction brought to bear in this study is a varying period of time to be served at Montana State Prison. The conduct or behavior eliciting the sanction is

¹Daniel Glaser, Adult Crime and Social Policy (Englewood Cliffs, N.J.: Prentice-Hall, Inc., 1972), p. v.

²Don C. Gibbons, Society, Crime and Criminal Careers (Englewood Cliffs, N.J.: Prentice-Hall, Inc., 1968), p. v.

³Kai T. Erikson, Wayward Puritans (New York: John Wiley and Sons, Inc., 1966), p. 5.

crime. Crime, that is what is considered to be dangerous, embarrassing or irritating, varies constantly. For example, prior to the Carrier's Case in 1473 England there were limited laws against theft. In order to prosecute a carrier who had absconded with some cargo he was to deliver "...existing legal rules were revised by the judiciary in order to solve a social control problem...."¹ In another example, in the early 1900's in the United States it was criminal to manufacture, transport and sell alcohol as a beverage. But after the repeal of Prohibition in 1933 the same behavior was not criminal. The constant shift in what behavior is considered deviant has led Erikson to write that "...the subject (deviance) itself does not seem to have any natural boundaries."²

The lack of consistency in deviance has led the subject to be approached from a multitude of perspectives. Lambroso, for example, held that persons were "born criminal" and that they constituted a separate anthropological type evidencing traits such as big ears, over-developed arms, and low cranial capacity.³ Lambroso wrote "...that many of the characteristics presented by savage races are very often found among born criminals."⁴ Gall, on the other hand, contended that criminal behavior was identifiable through phrenology.⁵

¹Gibbons, op. cit., p. 28.

²Erikson, op. cit., p. 5.

³Richard D. Knudten, Crime in a Complex Society (Homewood, Ill.: The Dorsey Press, 1970), p. 226.

⁴Gresham M. Sykes and Thomas E. Drabek, Law and the Lawless (New York: Random House, 1969), p. 133.

⁵Knudten, op. cit., p. 231.

Another approach to deviance is psychoanalytic theory, where for example, the law that "a criminal act (C) is the sum of a person's criminalistic tendencies (T) plus his total situation (S) divided by the amount of his resistance (R)", is found.¹

Glasser regards deviance as a lack of "involvement" and a failure identity solvable through the use of reality therapy.²

Other approaches focus on socioenvironmental and sociocultural and social psychological theories as are found in Gabriel Tarde, Clifford R. Shaw, Cloward and Ohlin, and Robert Merton.

Deviance in the present study is approached as relative to the social system in which it occurs. That is, according to Erikson, "behavior which qualifies one man for prison may qualify another for sainthood, since the quality of the act itself depends so much on the temper of the audience which witnessed it."³ For example, on the western frontier J.A. Slade was to newspaper editor Thomas Dimsdale a "fiend incarnate"⁴ and at the same time a folk hero to author Mark Twain.⁵ The idea that deviance is relative to the "temper of the audience which witnessed it" means to this study that the Indian offender is not considered to be inherently criminal, but rather is imprisoned for behavior

¹Abrahamsen quoted in Knudten, op. cit., p. 240.

²William Glasser, The Identity Society (New York: Harper and Row Publishers, 1972), p. 223.

³Erikson, op. cit., pp. 5-6.

⁴Thomas J. Dimsdale, "The Arrest and Execution of Captain J. A. Slade," in Malone and Roeder, op. cit., p. 89.

⁵Mark Twain, Roughing It, Vol. 1 (New York: Harper and Brothers, Publishers, 1899), pp. 88 ff.

considered by others to be deviant. Richard Quinney elaborates on same idea:

No behavior is criminal until it has been so defined through recognized procedures of the state. In this sense, 'criminal behavior' differs from 'non-criminal behavior' only according to the definition that has been created by others. It is not the quality of the behavior but the nature of the action taken against the behavior that gives the character of criminality.¹

The imprisonment of an Indian in Montana State Prison is the result of judicial action by the state for behavior felt to be in violation of standards defined by others who can initiate judicial action. Knudten writes that "law represents a codified behavioral standard defined by persons possessing access to the legislative process...."² The American Indian has lacked access due to their isolation onto reservations and the lack of citizenship until 1924.³ The study of the Indian offender is a study not only of his personal history, but is a study of the application of standards of conduct by the state onto those individuals considered to be deviant at the moment. Quoting Erikson again, "when the community nominates someone to the deviant class, then, it is sifting a few important details out of the stream of behavior he has emitted and is in effect declaring that these details reflect the kind of person he "really" is. In law as well as in public opinion, the fact that someone has committed a felony or has been known to use narcotics can become the major identifying badge of his person: the very

¹Richard Quinney, The Social Reality of Crime (Boston: Little, Brown and Co., 1970), p. 207.

²Knudten, op. cit., p. 54.

³Brophy and Aberle, op. cit., p. 16.

expression "he is a thief" or "he is an addict" seems to provide at once a description of his position in society and a profile of his character."¹ Thus, the figures found in the present study are not solely descriptive of an offender but of the legal system as well.

The locus at which the "temper of the audience" has been applying definitions of deviance (crime) is not equally distributed throughout the structure of society. In Quinney's words, "the official statistics on crime consistently indicate an overrepresentation of persons from the lower class. Studies of American communities have likewise shown that the lower class is most vulnerable to law enforcement and judicial action."² The disproportionate representation of the lower class, the new migrant, and racial minorities in the United States is well documented.³ It is frequently used as a classification in the examination of the differential application of definitions of deviance along ethnic lines. For example, a common division in the Uniform Crime Reports is between "white" and "non-white" criminal statistics. The variances found in the "crime rates" have been the object of much research.⁴ A great deal of Reasons and Kuykendall's new book Race, Crime and Justice is devoted to the black as compared to the white in reference to the administration of criminal justice pointing out the high

¹Erikson, op. cit., pp. 6-7.

²Quinney, op. cit., p. 217.

³See Knudten, Richard (ed.), Crime, Criminology and Contemporary Society, part 4, or Wolfgang, Marvin (ed.), The Sociology of Crime and Delinquency, part 4.

⁴See articles by Guy B. Johnson or Earl R. Moses in Wolfgang, The Sociology of Crime and Delinquency.

liability to arrest and imprisonment of the blacks.¹ American Indians, in a similar minority status as the blacks, are also faced with enormous problems as an excess of definitions of deviance are applied to them.

To illustrate the point, consider first the situation of the blacks. Blacks represent about 10 to 11 percent of the population of the United States, yet about one third of all arrests in the nation are black persons. In terms of rates, the black arrest rate for murder is ten times the white arrest rate for murder and the black arrest rate for burglary is three and one half times the white rate.² The arrest rate for blacks computed from the index crimes of the Uniform Crime Reports is four times as great as the white arrest rate.³ The excessive representation of blacks carries throughout the whole American judicial system. In prison, Savitz notes, the black constitutes from 35 to 39 percent of the total penal institution population.⁴ Additionally, the confinement rate for blacks to federal institutions is 25 per 100,000 while the white confinement rate is but 8 per 100,000.⁵ Indica-

¹Charles E. Reasons and Jack L. Kuykendall, Race, Crime and Justice (Pacific Palisades, Cal.: Goodyear Publishing Co., Inc., 1972), pp. 1 ff.

²Ibid., pp. 72-73.

³The Presidents Commission on Law Enforcement and Administration of Justice, The Challenge of Crime in a Free Society (Washington, D.C., 1967), p. 43.

⁴Leonard Savitz, Dilemmas in Criminology (New York: McGraw-Hill, 1967), p. 31.

⁵Reasons and Kuykendall, op. cit., p. 88.

tive of the magnitude of the differences in the application of sanctions against deviance between blacks and whites as these figures may be, the Indian is in a yet statistically worse situation.

Whereas the black arrest rate, based on the Uniform Crime Reports, is four times the white rate, the Indian arrest rate is three times the black rate.¹ The arrest rates are especially startling when one realizes there are but 792,730 Indians in the United States representing but 0.39 percent of the total population.² As was the case with the blacks, the Indians are also disproportionately confined in prisons. The confinement rate computed for Indians in federal institutions, 76 per 100,000, is about three times the black rate and nearly nine times the white confinement rate.³ In another example, Indians representing about five percent of the population of the state of South Dakota were found by researchers to represent nearly 34 percent of the state's prison population.⁴ Such differences, as noted above, have prompted Charles Reasons to write, "...Native Americans evidence a higher rate of arrest and conviction than any other racial group in the United States."⁵ In spite of the problem indicated by the arrest and confinement records

¹Ibid., p. 79.

²U.S. Dept. of Commerce, Bureau of the Census, 1970 Census of Population: General Population Characteristics-United States Summary (Washington, D.C.), table 48.

³Reasons and Kuykendall, op. cit., p. 88.

⁴W.O. Farber, Philip A. Odeen, and Robert A. Tschetter, Indians, Law Enforcement and Local Government (State University of South Dakota: Governmental Research Bureau, 1957), p. 3.

⁵Reasons and Kuykendall, op. cit., p. 88.

the American Indian, who has been labelled as criminally deviant, remains a very dimly illuminated subject.

In reflection, deviance (in this case crime) is not a discrete or special phenomenon with any inherent form. Its presence is found in the action taken by others towards some behavior of the offender. The action that is taken by others not only establishes that which is deviant, but also fixes its location within our society as well. To date the action has been mainly directed at the lowest socio-economic levels, the poorly educated, the minorities and the immigrant segments of our society.¹ While quantities of research have examined the black, the Italian, the Mafia, and the poor with respect to crime, little has been done and little is known of the Indian who came to be defined as deviant by arrest, trial, conviction and sentence to prison.

While we are ignorant of most of the properties conferred upon the Indian offender, some research has been completed. In 1956 increased lucidity of the Indian offender was stimulated by the United States Senate investigations "Juvenile Delinquency Among the Indians". The testimony in the investigations pointed out the high delinquency rates among the Indian tribes and pressed other researchers to explore the problem further.²

In 1957 Farber, Odeen and Tschetter completed a study of Indians and law enforcement in South Dakota. Their study is broadly similar to the present study and provides a background for reference. They worked

¹The Challenge of Crime in a Free Society, op. cit., p. 44.

²Reasons and Kuykendall, op. cit., p. 80.

with Indian arrest and conviction rates in South Dakota. Farber, Odeen and Tschetter surveyed various cities and counties of that state and examined the files on prison inmates held during August of 1956. Since their results are a background to this study, they are worth noting prior to an examination of the Indian offender in Montana. A summarization of their study is as follows:

- 1) Liquor was a problem for the Indian. Many arrests were attributed to alcohol.
- 2) In ten surveyed non-reservation counties, 45 percent of the arrests were Indians.
- 3) In ten surveyed cities, 42 percent of the arrests were Indians.
- 4) The Indian comprises 34.3 percent of the state prison population.
- 5) Characteristics of the Indian inmate were found to be:
 - a. The mean age was 25.6 years (33.6 for white inmates).
 - b. The oldest Indian inmate was 53 years old (70 for whites).
 - c. The median educational level for both ethnic groups was eight grades.
 - d. Seventeen percent of the Indians were committed to prison for crimes against the person (30 percent of the whites).
 - e. 82.6 percent of the Indians were committed for property crimes (69.5 percent of the whites).
 - f. Grand larceny and forgery were the most frequently found offenses among the inmates.
- 6) South Dakota had assumed jurisdiction over the reservations.

While Farber, Odeen, and Tschetter's work is similar to the present

study, it remains to be seen if the Indian offender found in Montana will be at all similar to the Indian offender in South Dakota in 1957.

Omer Stewart has also been studying aspects of Indian arrests and crimes. He re-examined the results of the South Dakota study and continued to calculate Indian arrest rates from the Uniform Crime Reports for 1960.¹ The high liability to arrest of the Indian has been mentioned. Stewart, however, only indicated the problem and made no study of the offenders.

Some other individuals have also examined the Indian and crimes, concentrating on arrest data.² Reasons' recent work on Race, Crime and Justice also points to the tremendous Indian arrest rates.³ None of the studies do much more than note the presence of the large amount of Indians in the arrest data of the Uniform Crime Reports. It appears that other than research into arrest rates and the study done in South Dakota, very little is really known of the Indian who is not only arrested but who is frequently convicted and sent to prison as well. This study will assist in closing that gulf.

Previous studies have not examined the legal status of the American Indian today, which certainly greatly effects the action any judicial system may take towards an Indian offender. That is, the control and application of sanctions against deviance in American

¹Omer Stewart, "Questions Regarding American Indian Criminality," Human Organization, 23 (Spring 1964), 61-66.

²For example, Mhyra S. Minnis, "The Relationship of Social Structure of an Indian Community to Adult and Juvenile Delinquency," Social Forces, 41 (May 1963), 395-403.

³Reasons and Kuykendall, op. cit., pp. 80-81.

Indians is relative to the complex interrelationships of jurisdiction over the tribes. It is necessary to understand completely the jurisdictional dilemma of the Indian and proper perspective towards the jurisdictional situation is best begun in a historical context. Past legal relationships between the white and the many tribes are a binding influence on current relationships. Many of the treaties are still active.

The various Indian tribes, totalling an estimated 600,000 persons in the 48 states at the time of white contact, 1492, were considered and treated by white authority as a sovereign body politic.¹ Indian relationships to whites were regulated by nearly 400 distinct treaty agreements between whites and the various sovereign tribes. One such agreement, the Northwest Ordinance which began with the paradoxical maxim "the utmost good faith shall be observed towards the Indians...", has been considered the basis for treaty relations between the federal government of the whites and the Indian tribes.² A further basis for considering the tribes as sovereign nations is contained in the United States Constitution which provided Congress with the right to make treaties and regulate trade with the tribes; a duty they were most diligent at until the cessation of treaty making in 1871. During the interim of treaty relations the Indian was subdued, decimated, and isolated onto several reservations (ranging in size from one acre in

¹William T. Hagan, American Indians (Chicago: University of Chicago Press, 1961), p. 2.

²Brophy and Aberle, op. cit., p. 17.

California to an area the size of West Virginia in the case of the Navaho reservation¹), but corralled as they were on reservations the Indian was still not amenable to white law. The tribes were sovereign. The reservations were separate, enclaved nations.

Congress was aware of the lack of jurisdiction over the Indian and in 1872 there was a Congressional push attempting to attain one common judicial system for both the white and the Indian. In the end, arguments contrary to a single legal system for both, which pointed out the grave possibilities of "exploitation" that could result from sudden Indian amenability to white law, defeated the push for concurrent jurisdiction. The standard of the time became "ultimate but not immediate equality."² The Indian remained in a legal limbo status.

A sequence of events precipitated in 1883 by a Sioux man named Crow Dog who killed another Sioux man on a reservation, altered the immunity of the tribes from white law other than as provided for by treaty. Crow Dog was convicted of murder in white courts and sentenced to the standard sanction of the time, death. On appeal of the case, the United States Supreme Court held that Crow Dog could not be held, tried, or sentenced since the federal government had no authority over crimes committed by Indians against Indians in Indian country. "Even a murderer could not be punished."³ Congress reacted swiftly. A short four months later federal legislation was enacted making the Indian

¹Ibid., p. 13

²Loring Benson Priest, Uncle Sam's Stepchildren (New York: Octagon Books, 1969), p. 200.

³Ibid., p. 201.

amenable to federal law but not to state law, even when on a reservation. The legislation, still in effect, is known as the 1885 Major Crimes Act and provides for federal jurisdiction in cases of:

- 1) Murder
- 2) Manslaughter
- 3) Rape
- 4) Assault with intent to kill
- 5) Arson
- 6) Burglary
- 7) Larceny
- 8) Incest
- 9) Robbery
- 10) Assault with a deadly weapon

Some time later additional crimes were added to the list, such as the embezzeling of tribal funds. All other crimes were the concern of the tribe as long as the offense involved Indians on the reservation. The tribe was still sovereign from the state.

Eventually the United States Act of August 15, 1953, also known as Public Law 280, continued to erode some of an Indian tribe's autonomy over offenses that were not excluded from their own jurisdiction by the Major Crimes Act. Public Law 280 provided that "...state criminal, and civil legislation (to) supersede tribal and federal enactments in the case of the reservation Indians...."¹ Public Law 280 did not apply to all of the tribes, nor did many of the tribes adopt it. Public Law 280 did, however, add the possibility of state jurisdiction into Indian legal affairs in Montana. It reduced the Indian's immunity from state law. Felix Cohen writes that this triad of criminal jurisdiction relating to Indians "...involves an allocation of authority among federal, tribal, and state courts", which depends on "...subject matter, locus

¹ Brophy and Aberle, op. cit., pp. 184-185.

and person."¹ This means that in order to apply an sanctions against deviance, the court having jurisdiction must first be determined.

Specifically, the Indians in Montana to which the triad of legal systems pertain are found on seven reservations. The largest reservation by population is the Blackfeet Reservation. The smallest is the Rocky's Boy Reservation inhabited by the Chippewa and Cree. Another reservation in Montana is the Crow Reservation occupied by the Crows. The Fort Belknap Reservation is populated by the Gros Ventre and the Assiniboine tribes. The Sioux and Assiniboine also inhabit the Fort Peck Reservation. In another part of Montana is the Northern Cheyenne Reservation on which lives the Northern Cheyenne people. Finally, there is the Flathead Reservation for the Salish and Kootenai.² Of these seven reservations, six have not terminated themselves judicially by ascribing to Public Law 280. Only on the Flathead Reservation is there concurrent jurisdiction with the state of Montana.

Concurrent jurisdiction for the Flathead was enacted in the 38th session of the Montana Legislature in 1963 and was known as House Bill 55. House Bill 55 was entered into the Revised Codes of Montana as chapter eight, sections 83-801 to 83-806. The major emphasis of the sections is that while the Flathead Reservation and tribe retains some rights and immunities, as for example from state taxation, jurisdiction over criminal law is given to the state. Basically the assumption of jurisdiction is important since the Indian offenders in the state prison

¹Cohen, op. cit., p. 358.

²U.S. Dept. of the Interior, Bureau of Indian Affairs, The Montana-Wyoming Indian (Billings, Mont.: n.n., 1965), pp. 1 ff.

who are from the Flathead Reservation are not in exactly the same legal status as those from the remaining six reservations.

Cohen's Handbook of Federal Indian Law helps to clarify the interrelationships of federal and state and tribal authority as is found in Montana. That is:

- 1) Crimes in Indian country by Indian against Indian;
 - a. Such crimes are generally the concern of the tribe.
 - b. Exceptions are the crimes that are considered to be federal under the Major Crimes Act.
- 2) Crimes in Indian country by Indian against non-Indian:
 - a. Such crimes may also be subject to federal law under the Major Crimes Act.
 - b. Two exceptions are when by treaty the tribe has exclusive jurisdiction, or if an offender has already been punished.
- 3) Crimes in Indian country by non-Indian against Indian:
 - a. Such crimes are generally federal.
 - b. Any exception is by Congressional act.
- 4) Crimes in Indian country by non-Indian against non-Indian:
 - a. Reservations are considered to be state property when no Indian property or Indian persons are involved.
 - b. The state has jurisdiction.
- 5) Crimes in which the locus is irrelevant:
 - a. Certain crimes are federal whether or not they occurred on a reservation.
 - b. An example is making prohibited contracts with Indian tribes.¹

In summarization of jurisdictional problems and tangles, the general rule is to apply federal law first, then tribal law and finally

¹Cohen, op. cit., pp. 358-365.

state law to the situation.¹ Currently all ethnicities are subject to federal law in the United States. Indian tribal law will apply if federal law does not apply. The state will have authority only when a crime occurs off a reservation except as provided for by Public Law 280, or in this case, except for the Flathead Reservation. This means that in order for an Indian, except on the Flathead Reservation, to go to Montana State Prison he must have committed a crime off the reservation and be processed through the legal system of the state. Thus, the subjects of this study all were off the reservation when they committed a crime unless the crime occurred on the Flathead Reservation.²

It has been pointed out previously that what is defined as deviant, or criminal, is dependent on the action taken towards that behavior by others. In light of the jurisdictional situation of the American Indian in Montana, the limit of concern of the present study is to behavior defined criminal, that is subject to and to which judicial action has been taken only by the authority of the state of Montana. The importance is that the Indians studied only represent criminals as defined by the state and not defined by the federal government nor by conduct norms existing in their own tribes.

Since the present study is limited to the examination of the Indian offender as determined by the state's courts, it is the processing activities of the judicial system that are central to the study. The administration of justice by the courts functions, partially, to

¹Brophy and Aberle, op. cit., p. 52.

²The difference concurrent jurisdiction over the Flathead has made in the prison population will be demonstrated later.

confine persons deemed criminally deviant to the state prison for a period of time. Since all subjects of this study have been processed by the single judicial system of Montana, the administration of justice is held to be relatively constant for all individuals ultimately destined to become prison inmates.

The processing of an offender through the legal system is selective. Blumberg has called the selection process the "sieve effect" whereby offenders are either continued on through the process of law or are sorted out at various stages.¹ The selection process in the administration of justice occurs from the level of arrest to the level of the sentence passed on a convicted offender. That is, "from the initial decision of whether to investigate to the final decision of whether to revoke a parole, the entire administrative process rests upon discretionary choices, formally recognized or not...."² For Example, there is discretion to arrest, to prosecute, to dismiss charges, and so on until parole.³ An often observed discretion is the negotiated plea. A judge may select to suspend a sentence or to grant probation rather than institutionalization, and can, within limits, even vary the length of the sentence. In certain cases the judge may choose in which institution an offender has to serve his sentence.⁴

¹Abraham S. Blumberg, Criminal Justice (Chicago: Quadrangle Books, 1967), p. 50.

²Sykes and Drabek, op. cit., p. 343.

³Gibbons, op. cit., chapter 4.

⁴Savitz, op. cit., p. 87.

The selections or discretions are often made on the criterion of the degree of "risk" that an offender may or may not return to be reprocessed by the judicial system. That is, the so called "better risks" are culled out of the system so that the further an offender progresses through the judicial system towards imprisonment, the "worse risk" he is felt to be. In the processing from arrest to prison, certain offenders are selected to receive probations while others are sent to prison. The President's Commission on Law Enforcement and Administration of Justice states, "at each level there is a sorting process by the agency. Thus the further along (in the processing), the offender will manifest more and more social-personal problems."¹

The present study of the Indian offender in Montana State Prison will, therefore, "...reflect in part the processing activities of law enforcement personnel."² The research will, by limitation, only represent that portion of all the convicted Indian offenders who are selected for imprisonment.

The Indian offender as an end product of a system of law, an inmate in a prison, is -as noted before- an obscure, little known individual. Indeed many statistics have been generated describing all inmates nationwide as, for example, by the Federal Bureau of Prisons, National Prisoner Statistics, but little is specific for the Indian. The fact that the American correctional system is responsible for about 1.3 million persons on any day, or that the inmate population is 95

¹The Challenge of Crime in a Free Society, op. cit., p. 44.

²Reasons and Kuykendall, op. cit., p. 58.

percent male, or that 30 percent of all male offenders are from 15 to 24 years old, are well reknown figures.¹ Descriptive statistics for the Indian offender, however, are lacking. In the state of Montana with a relatively large Indian population, less is known of the Indian in the state prison and little more is known of any Montana prison inmate.

By far the most significant study in Montana was done as a Master's thesis in 1959 by Benjamin Warren Wright. His work, titled "Characteristics of Adult Parole Violators", provides a description of 250 parole violators from Montana State Prison during the years just after the Board of Pardons was established in Montana (1955).² Wright's thesis does not make any distinction between the Indian and white parole violator. He does, though, compute several descriptive statistics that are comparable to the statistics used in this study. A comparison of Wright's results and the results of the present study will be made as needed. Wright's thesis is additionally valuable for his description of the working and establishment of the Montana Board of Pardons. It is an aid in understanding problems encountered in doing the present study.

In summary and to pose the major questions of this study, recall that deviance is a changing entity dependent on that behavior which is considered to be "dangerous or embarrassing or irritating" to a segment of a society which is able to bring sanctions to bear against persons emitting such behavior. Crime is one form of deviance. It is deviance

¹Martin R. Haskell and Lewis Yablonsky, Crime and Delinquency (Chicago: Rand McNally and Co., 1970), pp. 387 ff.

²Benjamin Warren Wright, "Characteristics of Adult Parole Violators" (unpublished Master's Thesis, Montana State University, 1959), p. 18.

from codified norms and codified sanctions, or law. What is criminally deviant varies, not only in time, but in the case of the Indian, in the context of which judicial system has jurisdiction at the moment. The study of the Indian offender studies the system which labels him as an offender as well. The interrelationship of past treaties, federal, state, and tribal law fixes the location of the criminal justice system viewed in the present study at the state level. Since the state has one system of law, it must also process non-Indian offenders as well. The question that is asked and answered in the present study is, "are the Indian offenders in Montana and the white offenders in Montana who are imprisoned through the processing of the one Montana judicial system similar?".

Chapter 2

DEVELOPMENT AND METHODS OF THIS STUDY

The collection and the analysis of data pertaining to the Indian offender in Montana was an involved and consuming task. It is the intent of this chapter to explain the development of the research project, to explain how the data and what data was gathered, and to explain how the data is used in this study to not only examine the Indian offender, but to compare him to his white offender counterpart in Montana State Prison as well.

Historically, the research project from which these data are extracted began shortly before Christmas of 1971. At the time, final arrangements for two research interns to be placed with the Board of Pardons in Deer Lodge were accomplished. The basic guide lines for the establishment of the research project required that two graduate students be assigned as research interns at the Board of Pardons to collect data for the Board of Pardons on the prison inmates they had processed for parole. The actual research period was ten weeks, during which time all the data were collected and recorded.

The items of information to be collected were listed in a Data Collection Guide along with the codes to be used to record the data. The general guide used in the selection of items of information to be collected was to record data for items that would best fulfill the needs of the Board of Pardons. Using the data collection guide, the two research interns were to examine during the ten week period the files of

the prison inmates available at the office of the Board of Pardons and extract and record data from the files. The data were to be recorded in such a manner that it could then be transcribed on computer punch cards. After the data had been punched on computer cards and verified, the interns could use any portion of the collected data for their own special interests. The totality of the data collected would be used as required by the office of the Board of Pardons.

During the Christmas season and the first few days of the new year, the data collection guide was completed. Constructing the guide so that it covered items of information needed by the Board of Pardons as well as by the interns, the guide tended to become lengthy and cumbersome. The items that were included in the guide were based on information that should be available in the majority of the files. The data collection guide was formulated without truly knowing the full structure and content of the files on the inmates of the prison. Unfortunately the "blind" structuring of the data collection guide caused some minor setbacks and delays once the project actually began at the Deer Lodge office.

Near mid-January of 1972, the collection of data at the Board of Pardons was initiated. The interns were provided with office space in the Board of Pardons building only a few convenient steps away from all the file material.

Once the interns were actually at the Board of Pardons, they set up the final codes needed to record information and created forms on which the data would be recorded for key punch operations. In this research project a mimeographed sheet listing item numbers and the column

numbers of computer cards with spaces for data recording was used. Simply in terms of time-cost functions for later key punch operations, the mimeographed sheets were an error. Unknown to the interns, it would have been much easier for the key punch operator to transcribe data from data collection forms that are commercially manufactured and readily available. The form the interns had created was functional, but not as expedient.

The first few days at Deer Lodge were utilized to become familiar with the files, their location, and filing procedures at the Board of Pardons. Ambitiously the examination of the first files began. It became discouragingly obvious to the researchers as they examined more and more files during the first week, that the data collection guide was not adequate to cover the needs and structure of the files. Facts that were considered to be important were being omitted. Some items, especially time spans, were being duplicated in the data collection. When almost 100 cases had been examined the original data collection guide was scrapped.

Starting anew with a cross section of the files at hand the guide was reformulated to try to better cover the data that were available in the Board of Pardon's file material. The new collection guide was expanded considerably to cover the multiple offender and the multiple parole violator without having to replicate data. The new collection guide also tended to become lengthy and somewhat cumbersome, but it did succeed in better covering all the possibilities and circumstances relating to an offender's history and processing within the judicial system.

By the end of the first week the new improved guide was finished; in all it included 201 possible items of information on any one offender. Indeed, not all offenders would have information to be recorded for all 201 items, but more alternatives were now accounted for in the guide. Basically the 201 items covered:

- 1) General personal history of the offender, such as age, education, family, and work experience.
- 2) A history of the offender's last chronological offense, such as county of trial and length of sentence.
- 3) A history of the offender's paroles from this offense, if any. Items such as time spent on parole, or residence while on parole are included.
- 4) Items one to three above but for any earlier offenses and convictions which covered recidivism.
- 5) If the offender had more than two prison incarcerations at Montana State Prison, general information on his additional offenses, sentences, and paroles were covered.

The magnitude of the information covered by the new guide was great. The present study uses but a few of the variables recorded for each offender.

Once past the false start and armed with a new and improved data collection guide, the research interns began again the task of working their way back, chronologically, through mountains of files. The extraction of data was a slow laborious process requiring extensive reading in each file. The "average" case took about 10 to 12 or 15 minutes to complete. Other cases that were either spectacular in some manner, such as a highly publicized murder or a case that had been in and out of prison three, four and five times, would take up to 30 or 40 minutes to complete. Many hours were spent recording data until

early March 1972. At that time the research project managed to examine all the files that represented the inmates over five years, from 1966 to 1971. At this point the actual data collection phase of the project was completed.

By mid-March the data recording forms were released to be key punched on computer cards. For the reason previously cited, key punching the data turned out to be a long process. Finally by mid-April the data were completely punched and had been verified. It is from the resultant deck of computer cards that the information presented here is drawn.

The genesis of the improved 201 item data collection guide was difficult, ridden with false starts and problems in adequately canvassing the material found in an offender's file, and sufficiently meeting the needs of the Board of Pardons. The Board of Pardons' goal for the research was to collect data from all the files that spanned a 10 year time frame. When, as noted, the research terminated the achieved goal was half of the original goal.¹

An integral part in the collection of data for the research project and in the recording of information was a definition of which files were to be examined. That is, the researchers needed to know which files to locate out of all the available files. On locating the files limitations were needed for the inclusion or exclusion of a file since not all files at the Board of Pardons were on prison inmates. The Board of Pardons also held files on persons under their supervision who

¹The time covered by the research was from July 1, 1966 to June 30, 1971, five fiscal years.

were probationers. In addition, there was a need to know where to find information in all the paper work that makes up an offender's file, and how valid that information was.

To locate the files of the prison inmates, lists of inmates who were scheduled to appear before the Board of Pardons at its scheduled meetings were used. This means that all the cases included in the study were those whose names were listed as scheduled to appear before the Board of Pardons either for parole consideration or as a parole revocation hearing during the time period June 30, 1971 to July 1, 1966. The name of the individual involved would appear on the Board of Pardons' lists whether or not the individual actually did appear before the Board. Persons who waived their appearance and those who were eligible for a parole but did not receive a parole were still included in the lists. Thus, virtually the total prison population who became eligible for parole or who had a parole revoked during the time period specified were included in this study. It is possible for an individual offender to have been paroled or mandatorially released from prison for one particular offense during the time period under study and to have committed an additional offense for which he was again imprisoned and once again eligible for parole consideration. The offender who was in and out of prison more than once during the study and who would be, thus, on more than one of the lists supplied by the Board of Pardons, has been included in the data but once. The data collection guide was so structured that an individual appears in the data only as a single individual. To accomplish the single appearance of an offender in the data, as an individual's name appeared on the lists all of his files for all of his

offenses were located and pulled out at once. Review and recording of data in the files was done simultaneously.¹ To locate all of an individual's files, when one file corresponding to the name indicated on the Board of Pardons' lists was found there would be several quick sources in the file that would list any additional files the offender may have had in Montana. Even if the additional offenses were possibly committed under an alias they would be listed and located and recorded as a single offender. After all the required information had been removed from the files, they would be marked so that the file could not be reintroduced into the study. In addition, a master list was compiled so the researchers could easily ascertain whether a certain case had already been completed or not.

In order to define which files would be included or excluded from the study, the project researchers agreed not to include any offender who was sentenced to the state prison for less than one year. For example, if an individual received a five year sentence but had all of the sentence except for 90 days suspended, that individual would not be included. An individual had to be sentenced to actually serve at least one year in prison. (Even if he might be released on parole before the year was completed within the institution.) If, as happened, an offender was sentenced to the prison for less than one year with the balance of his sentence suspended, but while on probationary status he violated the terms of the probation and he was returned to prison to

¹The majority of the files dated prior to the 1955 establishment of the Board of Pardons were not available. A few of the current files were not located.

serve out the remainder of his sentence, he was included in the study. Consequently there were two categories of offenders who were excluded from the data. The first were the recipients of suspended sentences who did not violate the terms of their probationary period. The second were those offenders who were sentenced to prison during the time period under study but who did not become eligible for parole consideration during the period.

With those exclusions⁴, the final tabulation of the cases for which data was recorded included 259 Indians, 895 whites, and 48 persons of other ethnic background for a total of 1,201 cases.

After locating the files of a particular case, it was necessary for the researchers to closely examine the contents of the files. Although the files contained many varieties of information from newspaper clippings, to letters and even drawings done by the offender, several sources of information stood out. One source of information in the files was the Descriptive List of Prisoner which provided general personal, physical, and legal information for the offender in question. A second source found in the files was the Social History, or Admission Summary, that contained information about the offender's educational background, past and present marriages, children, jobs, and an offender's version of his offense. Additionally there often were pre-sentence reports compiled by the parole and probation officers of the state. The pre-sentence report included much of an offender's social and legal history as well as his military record and circumstances of the present offense. The files also contained reports developed by the prison staff

describing the inmate's attitudes, problems, relations with other inmates, and job assignments. The Board of Pardons would also place a summary of the file for use by the Board when it met to consider paroles in the file. Frequently letters from county attorneys, letters from friends and relatives, Board of Pardons' memos, and letters from the inmate to the Board were included in the file. All the material contained in those sources was crossed-checked for accuracy. The admission summaries would actually state which sections of the report contained unverified information and which sections had been verified in some manner. The admission summary would also state if the information contained in it had been only partially verified by checks with FBI records, military records, social security records and questionnaires sent out to the offender's family. When an offender had more than one file, which was often the case, it was possible to gauge the validity of the information in the files by checking on consistency from one file to the next. In cases of conflicting information and questionable data, the information was recorded as "unknown".¹

The description and comparison of the Indian offender to the white offender in the present study uses only a limited amount of data from the expanse of data available on the 201 item data collection guide. The limitation of items included in the present study was based on the availability and collapsability of the data and the data categories. That is, at least 67 of the 201 items should have data recorded

¹Every item in the data collection guide had a possible "UNKNOWN" category for recording purposes.

for every offender in the study whether he is in prison for the first time or for the sixth time. Of the 67 minimum available items, 28 were used here. Six additional items were included to expand the coverage of the study over offenders who do receive a parole from Montana State Prison. Thus the present study utilizes at least 34 of the 201 items. Actually additional data is included from the collapsing of categories. For example, collapsing the number of state probations and the number of federal probations into a single category of probations extends the coverage of the data used here.

The 34 items used in the study of the Indian offender and their definitions are:¹

- 1) Place of birth, whether in Montana or in another state or foreign country.
- 2) The total number of natural siblings the offender has. Natural siblings are those brothers and/or sisters with the same biological parents as the offender.
- 3) The offender's religion.
- 4) Sex.
- 5) The offender's marital status at his intake into Montana State Prison. Divorces and annulments are placed in the same category. Common law marriages were based on at least one year common residence.
- 6) The total number of dependents that the offender has. Dependents are considered to be those minor children that the offender was legally responsible for, or actually does support, even though he may not be fulfilling that responsibility.

¹Indian, for purposes of this study, was defined by self evaluation by the offender at the time her enters prison. The evaluation was found on the Descriptive List of Prisoner in the files. The definition does not refer to percentage of "blood" or tribal enrollment.

- 7) The formal education the offender has completed outside of prison schools. This is measured in years (grades) that the offender actually completed in school. Partial completion of some grade level was considered as non-completion of the grade. Dropping out of school at mid-year in the tenth grade was considered as completion of the ninth grade.
- 8) Prison school enrollment was also used. This item notes whether or not an offender has ever enrolled in the prison school program in an attempt to further his education. This was considered to be enrollment in the Cottonwood School at the Montana State Prison and not enrollment in craft or trade classes or correspondence schools. Enrollment in the prison school was readily known through the work assignment record of the inmate.
- 9) An offender's past military service record indicating whether or not he was ever in any branch of the service. If an offender had been in the service at some time, this item will indicate which branch of the service he entered.
- 10) If an offender did have prior military service, this item notes the type of discharge he received from the service. Three categories of discharges are used. The first category includes Honorable, General, Medical, Under Honorable Conditions, and discharges for the convenience of the government, as in demobilization periods. The second category includes the Less than Honorable, Undesirable, Bad Conduct, Other than Honorable, and Dishonorable discharges. The final category includes those cases that were unknown or for which a discharge from the service was still pending.

In cases where an offender may have had multiple service either in more than one armed force or for more than one term of enlistment, the type of discharge he received on his last discharge is the type that was recorded in the data.

- 11) The known drug use of the offender as indicated by the records. A drug was considered to be any narcotic. For purposes of this study it includes everything from marijuana to heroin. Known use was any degree of use in any amount and was not an indicator of addiction. Thus, to have "tried grass just once" or "just experimented" was considered to be known drug use and was recorded in the data as such.

- 12) Alcohol. Does the offender have an alcohol problem indicated? This item was a dichotomy between having a problem indicated with alcohol, or not having a problem indicated. The problem indicators are commitments to alcoholic programs, doctor's diagnosis, extensive drunk arrests, and an admission of a problem. Membership in the prison Alcoholics Anonymous program was not sufficient evidence of a problem since the AA group was often joined for "good time" consideration.¹ The presence of alcohol in the commission of the offense was not singularly indicative of an alcohol problem.
- 13) The age when the offender first left home for at least six months or more. His departure from home may be either voluntary or involuntary by reason of the draft, commitment to an institution, school, or simply being asked to leave the home. Home means residence with his parents, relatives who act as guardians, or guardians by adoption. The admission summary would often indicate this age in a single sentence. When doubt existed, the data was recorded as an unknown.
- 14) An offender's age at his first known juvenile offense. This includes arrest or institutional commitment prior to age 18.
- 15) The number of times the offender has been committed to juvenile institutions. This information was recorded for separate commitments rather than for escapes or parole violation and subsequent return to the institution. The data does not indicate placement in orphanages.
- 16) The total number of known arrests an offender has recorded in his files. This includes all types of arrests that would appear on the Federal Bureau of Investigation records ("rap sheet"). The Board of Pardons' files usually contained an arrest summary that allowed swift tabulation of the total number of arrests an offender has had.

¹Good time is the reduction of a sentence as provided for by statute (Sections 80-739 and 80-740, Revised Codes of Montana) for good behavior and attendance in certain clubs, organizations, programs and groups. Additional good time may be gained by an inmate for donating blood. In all the use of good time can reduce the time spent in prison by as much as one quarter of the total sentence.

- 17) The age at which the offender committed his first felony and was convicted was also used. This was not necessarily the age of first imprisonment, but may be the age when an offender received a probation or suspended sentence for a felony. A felony is any crime that could have resulted in at least one year in prison.
- 18) The total number of felonies an offender has been convicted of in the United States. (Some Indians may have a Canadian record.) This includes federal as well as state convictions. The convictions must have been subsequent to age 16 since at age 16 an offender may be sent to Montana State Prison for certain offenses, such as murder.
- 19) The total number of state and federal probations that the offender's have received. This includes any felony conviction for which less than one year was a prison sentence and the remainder of the sentence was served in the community.
- 20) The total number of state and federal probations that an offender received and subsequently violated.
- 21) The total number of state prison incarcerations the offender has had in his life. This was a sentence of one year or more in any state prison.
- 22) The total number of times an offender has had a federal prison incarceration. This was incarcerations for one year or more and for separate offenses and not re-commitments for parole violations.
- 23) The last chronological offense of the offender at the time of the study. This lists the type of crime for which the individual was convicted and sentenced to serve at least one year in Montana State Prison.
- 24) The offender's age at his intake into prison for the offense cited in 23 above, in years. The age was determined from the Descriptive List of Prisoner in the files.
- 25) The offender's plea to the offense, whether "guilty" or "not guilty", from the court records.

- 26) The Montana county of trial for the offense. This item was used to compare the number of offenders who are paroled to the same county from which they were convicted. See item 31.
- 27) The total number of co-defendants that an offender had in the commission of the offense as judged by legal agencies (courts and police). That is, the number of co-defendants who were picked up for the same offense even though they may have been given a lesser, greater, or equal sentence to the offender under study.
- 28) The total length of the sentence, in years, that the offender received for the offense. If a sentence was not given in whole years, then the data was recorded by rounding down for any part of one year up to and including six months. Thus, for example, a sentence of 30 months was recorded in the data as two years.
- 29) The length of time an offender has actually served in the prison until he was granted a parole for the first time and released from prison. The time was figured to the date of release from the institution rather than the date at which the parole was granted as the two dates often differ. The data were recorded in months with rounding taking place at 15 days. This item will also indicate those offenders who did not receive parole, but who served until their mandatory release date from prison. This was the first of six items used to cover the data on parolees.
- 30) The state of the Union the parolee went to immediately upon his release on parole. If he was deported to Canada or Mexico, the data would so indicate.
- 31) The Montana county the parolee was immediately paroled to, and indications if this was the same county from which he entered prison.
- 32) The initial residence of the parolee on his release from prison. This indicates whether he resides alone, with his family, with his parents, or with friends. It was the address at which the parole officers should be able to locate him.

- 33) The duration of successful parole before the parolee had his parole revoked, if applicable. This will indicate the number of offenders who violated parole within certain time groups. If the parolee remained on successful parole at the time of the study, the data would so indicate. Successful completions of the parole period would also be indicated.
- 34) For those parolees who did not have a successful parole period and were returned to prison, the reason for which the parole was revoked would be indicated. Violations of parole by the commission of a new offense or by violation of the rules of parole are noted.

All of the 34 items listed and defined are used to gain an understanding of the Indian offender in Montana. The presentation of the data relating to the items listed utilizes descriptive statistics. These will include means, medians, and percentages. All computations in this study revolve about the basic figure of 259 Indian offenders in the five years in the study. However, in some cases this basic number may vary slightly as adjustments were made to exclude those cases that have "unknown" data indicated for a particular item under consideration. The computations were done from frequencies obtained by use of an IBM card sorter and the use of an electronic calculator.

The 34 items selected for use in this study were subjected to two tasks. The first task uses all 34 items and seeks to answer by description, who the Indian offender in Montana is. Secondly, a portion of the items (16) were used to statistically compare the Indian offender to the white offender. The next few pages, then, define the use of the 16 items and establish criteria for their use for a comparison of the Indian and the white offender. The comparison intones the major question of this study which is: are Indian offenders similar to white offenders

after processing by the state's judicial system? The effort to answer the question will be a statistical comparison and test of the 259 Indian offenders and the 895 white offenders using 16 of the 34 items. The comparison was tested in the form of the central hypothesis of this study.

The hypothesis of the study is, THERE IS A STATISTICALLY SIGNIFICANT DIFFERENCE ON SELECTED ITEMS BETWEEN INDIAN AND WHITE OFFENDERS IN MONTANA AS KNOWN THROUGH DATA AVAILABLE AT THE MONTANA BOARD OF PARDONS, JULY 1, 1966 to JUNE 30, 1971.

In order to test the hypothesis of difference between the two groups, certain limitations, definitions, and criteria for the test of statistical significance needed to be established. The first limitation was placed on the items of comparison. The selected items, of which there were 16 as pointed out previously, were all derived from the 201 item data collection guide. Consideration for the selection of items was based on the availability of the data. That is, items were selected that should have data recorded for all offenders. Then too, consideration was given to the items that would be collapsable to concentrate more data in less space. Finally, selection was based on judgements as to those items which were felt to provide the most valuable comparisons. Items such as religion, sex, place of birth, or the number of natural siblings were excluded from the comparison. The following 16 items were selected for testing:¹

¹All items used here are defined exactly as before unless otherwise noted.

- 1) The offender's marital status at his intake into Montana State Prison.
- 2) The total number of dependents that the offender has.
- 3) The formal education the offender has completed outside of prison schools.
- 4) An offender's past military service record.
- 5) The type of discharge from the military service for those inmates who ever were in the military service.
- 6) The known drug use of the offenders as indicated by the records.
- 7) The presence of or absence of an alcohol problem.
- 8) The offender's age at his first known juvenile offense.
- 9) The total number of known arrests an offender has recorded in his files.
- 10) The age at which an offender committed his first felony and was convicted.
- 11) The total number of felonies an offender has been convicted of in the United States.
- 12) The last chronological offense of the offender at the time of the study.
- 13) The total length of the sentence for the offense.
- 14) Whether a prisoner was paroled from the institution or served until mandatorily released from the institution.
- 15) The disposition of the parolee. This means the outcome of the parole for all who were granted a parole. This will indicate whether a parole was revoked, successfully completed, or was still in good standing at the time of study.
- 16) The duration of parole for parolees who violated their parole and had it revoked.

To each of the 16 items of comparison the hypothesis has been progressively applied. That is, the hypothesis was tested in relation to each of the 16 items in turn. For example, the hypothesis applied to item one would be, there is a statistically significant difference in the marital status at intake into Montana State Prison between Indian and white offenders... . Next, the hypothesis would be applied to item two and so on until all 16 were tested using this hypothesis.

In actuality the hypothesis that was tested directly was the null hypothesis. The null hypothesis in this case, and for all 16 items, was that there is not a statistically significant difference between the Indian and white offender. In brief form the null hypothesis is simply stated as "no difference".

The basis for acceptance or rejection of the hypothesis will be made following accepted statistical procedure for the level of significance and the computation of a test statistic. To generate a test statistic for use at the established level of significance, $P=.05$, the chi-square test and distribution of chi-square was used. Chi-square is "...a very general test which can be used whenever we wish to evaluate whether or not frequencies which have been empirically obtained differ significantly from those which would be expected... ." ¹ It is a test that can be used to test not only for the existence of a relationship between variables, but it can be used in measures indicative of the strength of the relationship.

¹Hubert M. Blalock, Social Statistics (New York: McGraw-Hill Book Co., 1960), p. 212.

The chi-square test statistic that results from the computations was used in conjunction with the table of the sampling distribution of chi-square found in Hubert Blalock's Social Statistics, table I.¹ Thus, "a chi-square larger than the value in the table is significant and would cause the rejection of the (null) hypothesis," at the proper degrees of freedom and at the established significance level.²

The level of significance established as a basis for decision for this study was $P=.05$. The risk, thus, of rejecting a true hypothesis was set at five percent, or five times out of 100 times. This level of significance was used partially out of practicality and partially because the .05 level is often used in "exploring and developing hypothesis."³ All acceptance or rejection decisions required for the hypothesis were made with the $p=.05$ criterion using the proper statistical tables and degrees of freedom required for the chi-square test statistic.

Calculations of chi-square were based on frequencies observed from the use of an IBM card sorter, as was the case with the descriptive items. The observed frequencies were used in the calculations done and re-done using an electronic calculator.

It is to be noted that the total number of Indians (259) and whites (895) varies in the computations from one item to the next due to

¹Ibid., p. 452.

²Stanford M. Dornbusch and Calvin F. Schmid, A Primer of Social Statistics (New York: McGraw-Hill Book Co., 1955), p. 213.

³Dennis P. Force and Stephen Richer, Stages of Social Research: Contemporary Perspectives (Englewood Cliffs, N.J.: Prentice-Hall Inc., 1970), p. 322.

adjustments eliminating "unknowns" or errors in the key punching of the cards.

Thirteen female Indian offenders and 19 female white offenders were included in the chi-square calculations unless it is noted otherwise. The number of females was so small that separate calculations for them would not yield acceptable results. Therefore, when the female offender is widely divergent of the general population in some trait, it will be pointed out.

The major thrust of this chapter is the explanation of how the data used in the study was actually collected and processed. Limitations were placed on the data to be used in this study. Definitions of what the data were and the establishment of definitions and criteria for the use of the data were accomplished. Thirty-four variables were selected to gain an insight into the Indian offender in Montana. Sixteen of these were selected for use in a statistical comparison between the Indian and the white offenders who were deposited in Montana State Prison by the action of the Montana judicial system. The results of the study performed under the structure created in this chapter are presented in the following chapter.

Chapter 3

THE INDIAN OFFENDER IN MONTANA

It wasn't so many years ago that the Indian would not have been a prisoner in the Montana correctional institution. The Indian was responsible only to his tribe. Transgressions of tribal norms were controlled by ostracism, isolation and restitution rather than imprisonment.¹ As whites spread across the land to fulfill their "manifest destiny" the Indian was engulfed and subsequently isolated on reservations. The Indians have remained apart from much of white society. The tribal courts today are not similar to white courts. There are fewer offenses for which an Indian can be tried. Even when tried and convicted the tribal courts seldom give out punishments exceeding six months incarceration.² Tribal judges are seldom lawyers. Fifty of the Indian tribes yet prohibit lawyers from the tribal courts.³ But in spite of isolation and segregation, the Indian has been slowly thrust into the white system of judicial action. With the removal of immunity from white law, as on the Flathead Reservation, more and more Indians are subject to state law. What are the Indians who come in contact with white law like?

As was expected due to the enclavement of Indians onto reserva-

¹Reasons and Kuykendall, op. cit., p. 91.

²Brophy and Aberle, op. cit., p. 50.

³Ibid., p. 58.

tions in Montana and due to the large number of Indians, the majority of the 259 Indian offenders were born within the state of Montana. In fact 193, 74.52 percent, were born within the state. On the other hand, 61, 23.55 percent, were born within other states. The remaining five Indians, 1.93 percent, were born outside of the United States, without much doubt in Canada.

Using data reported in the 1970 Census of Population, one can see that nearly 80 percent of the Montana Indian population is classified as rural by census definitions.¹ There is a high probability that a large majority of the 193 Montana Indian offenders were also rurally born and raised.

The second item describing the Indian offender is the number of natural siblings he may have. The range of siblings was from having no brothers or sisters to having 14 brothers and sisters. That was a large family. Fifteen children! Measures of central tendency testify that the mean number of siblings was, in whole siblings, five. The median number, also in round numbers, was four siblings. In either case, since one must be added to these figures to arrive at the total number of children in a family, the Indian offender came from a large family clustering around five or six children.²

Not only the family size, but the history of Montana as well, leads to the expectation that a very large portion of the Indian popu-

¹1970 Census of Population: General Population Characteristics-Montana, op. cit., table 17.

²The figures are based on an N of 253. Six cases were "unknowns".

lation are adherents of the Catholic religion. Early in the 1830's the Flathead Indians attempted to secure a missionary from St. Louis and were finally successful with Father De Smet's 1840 arrival in the Bitter Root Valley.¹ The early missionary activity was reflected in the religious preference of the Indian offenders. The majority (74.71 percent) stated they were Catholics. Only but 22.18 percent of the Indians stated they were Protestants. Some few Indians, eight, 3.11 percent, had no religious preference, no religion, or were of other religions such as the Latter Day Saints.² No Indian inmates belonged to the Native American Church.

The fourth descriptive item considered was the sex of the Indian offenders. In light of the nationwide figures which show 95 percent of all offenders to be male, it was probable this phenomenon would carry through with the Indian offenders. For the 259 Indians this was most certainly the case; 246 of the 259 were males. This was 94.98 percent of the Indians.

Representing more choice by the offender than his sex or place of birth was his marital status at intake into the prison at Deer Lodge. The following table summarizes this status. To be single, in this study, means to have never been married. It should also be noted that the category "divorced" also contains any cases of annulment of a marriage. Common law marriage was based on one year of common residence.

¹Rev. Marin Florian, The Story of St. Mary's Mission (Helena, Mont.: Bishop of Helena, 1959), pp. 1 ff.

²The remaining two cases are unknowns.

Table 1

Marital Status at Intake

Status	Number	Percentage
Single	135	54.33
Married	28	10.85
Divorced	53	20.54
Separated	18	6.98
Common Law	20	7.75
Widow(er)	4	1.55
Total	258*	100.00

*One unknown.

It was apparent that the majority of the Indian offenders were single. The single status of the Indian was slightly higher than the 49 percent single status found by Ben Wright in his thesis.¹ It was also higher than was reported in The Challenge of Crime in a Free Society, where 43.7 percent of the offenders were single.² It was a figure quite greater than the 25.1 percent of the general population which were single.³

Since such a large number of the Indians were single, it was expected that the mean number of dependents they had would be low. The mean number of dependents the offenders had, when the total Indian offender population of the study was considered, was but 0.91 dependents. However when all the marital status categories that ever could have been married, including common law, were combined and all the single offenders were eliminated to calculate the mean, the mean number of dependents rose to 1.93. The latter figure is more descriptive and accurate. Thus even when the large number of single Indian offenders were excluded, the Indians were not tied to nor responsible for a large number of dependents.

Describing the educational levels the offenders had completed without enrolling in prison school programs, it was seen that only two Indians completed no grades at all; three completed, while, on the other hand, 14 grades (sophomore year of college). Nearly one half of the

¹Wright, op. cit., p. 52.

²The Challenge of Crime in a Free Society, op. cit., p. 45.

³Ibid.

Indian offender population, 45.56 percent, completed from 10 to 12 grades of school. An additional 42, 86 percent, finished from seven to nine grades of school, and 9.65 percent completed anywhere from no grades to six grades of school. At the other extreme, 1.93 percent finished 13 or more grades of school. Thus, the median educational grade completed for the 259 Indians was 9.79 grades. (The mean was 9.17 grades.) Compared with other studies the Indian offender in Montana was not only completing more grades than other Indian offenders, but was also completing more grades than the general prison population of the nation. The 1959 study of Indians in South Dakota obtained a median education of the Indian inmate of eight grades.¹ Wright's thesis, mentioned before, reported a median education of 8.8 grades for 250 parole violators in Montana.² The Challenge of Crime in a Free Society reported a median education of 8.6 grades for inmates.³ The educational achievement of the Montana Indian offender was still far below the median for Montana which was, for whites 12.3 grades, and for all other races 10.0 grades.⁴ It is true that these census figures were based on computations for persons 25 years old or older and were not directly comparable to the figures reported here, but they do provide a general comparison in broad trends illustrating the lower median educational achievement of the Indian offender.

¹Farber, Odeen, and Tschetter, op. cit., p. 46.

²Wright, op. cit., p. 53.

³The Challenge of Crime in a Free Society, op. cit., p. 45.

⁴U.S. Dept. of Commerce, Bureau of the Census, 1970 Census of Population: General Social and Economic Characteristics-Montana, (Washington, D.C.), table 46.

As the fifth electronically operated heavy steel gate slams shut behind the Indian offender entering prison, he seldom does more than pass time and makes no efforts to use the prison school program to lessen the educational gap noted above. The prison work assignment records showed that 66.15 percent of the Indian inmates never enrolled in the prison school program.¹ The remaining 33.85 percent of the Indian inmates did, at some time, at least enroll in the school. The percentage of the inmates that continued in the school program and completed more grades was even a smaller percentage.

The ninth item of description was the military service record of the offenders. A summarization of the service of the Indian offenders appears as Table 2. The figures included in the table represent only the male portion of the 259 offenders. The category "other" included the Coast Guard, National Guard, Reserves, and multiple service in more than one branch of the armed forces of the United States.

The distinguishing feature that was immediately obvious in Table 2 was that most of the offenders have had no history of service in any of the armed forces. Considering only those Indians who did have a history of military service, the majority served in the army. This probably reflects the use of the draft to keep the ranks of the army full. Further examination of Table 2 shows that, combining categories, 100 Indians had been in the armed forces at some time during their lives. The following descriptive section brings out the type of discharge the 100 received from their service.

¹Figures were based on an N of 257. Two unknowns.

Table 2

Military Service Record of 246 Male Indians

Branch	Number	Percentage
Army	58	23.58
Navy	16	6.50
Marines	11	4.47
Air Force	11	4.47
Other	4	1.63
No Service	146	59.35
Total	246	100.00

First, eight of the 100 veterans were recorded in the data as unknowns; computations were thus based on 92 discharges. Honorable, general, or medical discharges were given to 54 of the servicemen, 58.70 percent. But, on the other hand, the remaining 38 received other than honorable releases from the service. While more Indians did receive honorable discharges, quite a large percentage, 41.30 percent, did not fare well in the military and received less than honorable releases from the services. This may be indicative of problems in those offender's lives and in their adjustment to white society and systems of authority.

While doing this research at Deer Lodge a frequently discussed topic among both the staff and the inmates we grew to know, was the extent of drug use and abuse inside of and outside of the prison walls. The data on the "known drug use" of the offenders was an attempt to better visualize the magnitude of drug use out of and/or in prison. All forms of narcotics from marijuana to "acid", to heroin were included in the data to obtain the worst possible indicator of drug use. The data was based on 256 Indian offenders were and of that number 235 offenders, 91.80 percent, had no reported or known drug use indicated in the records. Users of narcotics were found in only 21 cases, 8.20 percent. Although these figures represented the correct picture of drug use recorded from the prison records, it may not be a completely accurate picture of the true use of drugs by the offenders. The figures at first glance can belie the true extent of drug use. The small percentage of known drug use was probably an artifact of the records. That is, very few inmates admitted the use of or experimentation with any drug since he knew this would become a part of his record not only for the prison staff to see, but for the very important Board of Pardons to see as well.

The inmate desires to present a relatively clean image in the records for the people who recommend on his parole to see. Additionally, any admission of drug use would place him under greater surveillance by the staff of the prison. The 21 known users recorded in the data were probably those offenders who were caught in prison with some drug, those who had such an extensive drug problem it could not be hidden, or first offenders not yet wise to the life of the prison who admitted smoking marijuana or trying LSD on occasion.

Among the Indian offenders there was another type of drug use that was much more extensive, and that was excessive use of alcohol. Table 3 vividly points out the extent of an alcohol problem among the Indian offenders. The magnitude of the alcohol problem is, sadly, in agreement with other studies. Omer Stewart found alcohol to be involved in 71 percent of the Indian arrests.¹ The follow up study by Reasons was in complete agreement with Stewart's results.² The study by Farber, Odeen and Tschetter reported similar results.³ The extreme use of alcohol by the Indians is often felt to be a result of the long history of prohibition the Indian endured. The ban against "firewater" lasted from 1832 until 1953 and it is felt the Indian has not had an opportunity to learn moderate use of alcohol.⁴ It may be beneficial to note that this item does not indicate that alcohol was necessarily

¹Stewart, op. cit., p. 61.

²Reasons and Kuykendall, op. cit., p. 91.

³Farber, Odeen and Tschetter, op. cit., p. 15.

⁴Stewart, op. cit., p. 66.

Table 3

Alcohol Problem Indicated

Indication	Number	Percentage
Problem Indicated	200	77.22
No Problem Indicated	59	27.78
Total	259	100.00

involved in the commission of the crime, but pertains only to the problem an offender may have with alcohol without any corresponding legal trouble. Parenthetically, alcohol was involved in over 60 percent of the crimes for all races in this study at Deer Lodge.

Another important consideration in any description of the circumstances and conditions surrounding the lives of the Indian offenders was the age at which he first left his home for six months or more. On the average (mean) the Indian offender left home at an age of 16.74 years. The median age for the same item was 17.11 years. However before any judgements are made, it must be noted that a large number of unknowns were recorded for this particular item of information; 69 out of 259 cases were unknowns. The 190 offenders for which data was available, were leaving home slightly prior to the age when eligible for the draft and also prior to the time of graduation from high school could have been accomplished. Daniel Glaser observed that "the earlier an offender of any age leaves home, the more likely he is to continue in crime."¹ Glaser continues to state, "the later one gets started in crime, the more time the home, the school, the church, and other agencies have had to instill ideas and sentiments which may, in the long run, effectively oppose the influence of criminals."²

In the same vein, Glaser writes that "...the younger a prisoner is when first arrested, convicted, or confined for any crime, the more

¹Daniel Glaser, The Effectiveness of a Prison and Parole System: abridged ed. (Indianapolis: The Bobbs-Merrill Co. Inc., 1969), p. 21.

²Ibid., p. 22.

likely he is to continue in crime."¹ A small measure of the statement found in this data is the age at which the Indian offender had his first juvenile offense recorded. The mean and median age for first juvenile offense was 14.50 years and 15.66 years respectively. The age of first juvenile offense was, in fact, younger than the age at which the offenders first left home. Attention must be given to the statistical derivation of the age at first juvenile offense since it was based on 110 cases out of the 259. That is, fully 121, 46.72 percent, of the Indian offenders in prison had no recorded or known juvenile offenses. Even though many of the cases were unknowns, it is still possible to note that the Indian youth were starting to become delinquent at an early age and at an age prior to their separation from the influences of the home. It is possible that the Indian delinquent who goes on to prison was less susceptible to the influences of the home, church, school and other agencies than the offenders represented in Glaser's data.

Of the 110 Indian juvenile delinquents, 86 were sent at some time to a juvenile institution such as the Pine Hills juvenile training school at Miles City, Montana. Of the 259 Indian offenders in the study, only -roughly- one third of them had ever been sentenced to a juvenile institution. Glaser states that "actually, the greatest recurrence of criminal activity occurs...among those released from juvenile training schools."² If that is the case, most of the Indian offenders in Montana

¹Ibid., p. 19.

²Glaser, op. cit., p. 27.

State Prison should not be the most "criminally active". Most of the Indian offenders should be but one time losers. That is, Indians should not have been sent to prison multiple times. This was not the case, as will be shown soon.

Following the sequence outlined earlier, the next item of description was the total number of known arrests an Indian offender had on his records. The range in the number of arrests was from one arrest to 99 arrests. To diminish the skewedness found in the distribution of arrests, the extreme four cases of 99, 90, 85, and 40 arrests were eliminated to compute the mean number of arrests, which was, as a result, 7.41 arrests. The median number of arrests was 5.98, and due to the skewedness that remains even after the exclusion of the extreme cases, it was felt to be a more representative measure of the number of times an Indian offender was arrested. Wright, also faced with a skewed distribution of arrests, obtained a mean of 8.85 arrests and a median of 6.58 arrests for the 250 parole violators in Montana.¹ A median of about six arrests is a fairly accurate description of the arrest history of the Indian offender.

Now that the Indian offender has been followed through a development from juvenile offenses to juvenile institutionalization, and to his adult arrest record, it is time to examine the age at which he was first convicted of a felony offense. Data frequently represents the general offender as a young man usually in his early twenties, with

¹Wright, op. cit., p. 56.

slight differences in age corresponding to different types of offenses.¹ The American Indian in the state prison was no less youthful having a mean age at conviction for the first felony of 23.39 years and a median age of 21.61 years. The median age was quite young but is probably a better measure of the central tendency of the age distribution for Indians at their first conviction. The youthfulness of the Indian offender is a point well worth noting. The age of the offender was an important factor in the comparison and differences that were found between the Indian offender and the white offender. It will be shown that the majority of the Indian offenders were not granted probationary sentences but were sent directly to prison. Done at such an early age when crime may be youthful error, the Indian offender was not provided with alternatives and begins to learn a pattern of crime and imprisonment which was manifested in the average of two falls, that is two prison terms, for the Indian offenders.

Recalling Glaser and the thought that the bulk of the Indian offenders should be but one time losers as most were not juvenile delinquents and fewer were ever in juvenile institutions, examination of the total number of felonies for which the Indian offenders had ever been convicted was only partly conforming. Table 4 summarizes the total number of felonies the Indian offenders had been convicted of whether as a probation or a prison sentence of at least one year's length. The table includes state and federal convictions. Indeed 121 of the Indians had no juvenile record and similarly 113 of the Indians had but one felony

¹Marshall B. Clinard, Sociology of Deviant Behavior, (New York: Holt, Rinehart, and Winston, Inc., 1963), p. 208.

Table 4

Total Number of Felonies

Felonies	Number	Percentage
1	113	43.63
2	78	30.12
3	30	11.58
4	16	6.18
5	12	4.63
6	7	2.70
7	1	0.39
8	1	0.39
9	1	0.39
Total	259	100.00

on the records. As noted, the Indian offender was young. It is surprising, looking deeper into Table 4, that more of the Indians were not first offenders. The mean number of felonies for the group was 2.12 felonies. Very nearly the same was the median of 2.21 felonies. Since many of the Indians did not graduate from juvenile institutions to the state prison and since many were young, the fact that they tend to be confined in prison at least twice is a salient feature.

Consider the total number of felonies in more detail. The next four items breakdown the total number of felonies by state and federal levels as well as by prison or probationary sentences. The first breakdown represents the number of state and federal probations the 259 Indian offenders received up to the time of the study. The data is presented in Table 5. From Table 5 it is obvious that the Indian offender was seldom the recipient of a state or federal probation. This is true and surprising since the Indian was amenable to federal law when on the reservation and not to state law.

The second breakdown illustrates how the Indians who were given a probationary sentence did on the sentence. Table 5 showed that 22 Indians received a federal probation. Of the 22 probationers, 14, 63.63 percent, violated the terms of the probation and had it revoked. For the 96 state probationers, 82 of them, 85.42 percent, violated the probation. Even if the Indian did receive a probation, it was unlikely that he will complete the probationary period without violation and imprisonment. Most of the Indian offenders in this study seem bound to do time behind the walls of the "big house" in Deer Lodge by sentence to prison or by probation violation.

Table 5

State and Federal Probations Received

Federal Probations			State Probations		
Received	Number	Percent	Received	Number	Percent
None	237	91.51	None	163	62.93
1	22	8.49	1	93	35.91
2	0	0.00	2	3	1.16
Total	259	100.00	Total	259	100.00

A third breakdown of the total number of felonies the Indian offender had was to breakdown the number of times the offenders had been incarcerated for a year or longer in state prisons across the nation. Table 6 presents the data eliminating federal confinements. Table 6 points out that 52.12 percent of the Indian offenders had been in a state prison once. The other half of the offenders had been in state prisons more than once. It is increasingly apparent that the locus of confinement was at the state level for Indian offenders.

The last breakdown confirms this by the examination of the number of federal incarcerations presented in Table 7. Table 7 makes it very clear few of the offenders had been inside of federal correctional institutions.

Summarily, the tables show that over one half of the Indian offenders were not strangers to felony convictions. From Table 4, 6.37 percent had committed two or more felonies (Table 4) and for these acts they generally were not receiving probations and were headed for a term in a state prison. Table 7 indicates that while the Indian offender was in the position to be sent to federal institutions for crimes that occur in Indian country, most of these crimes were occurring where the state had jurisdiction. Only 15.83 percent of the Indian offenders had been incarcerated in federal facilities. The locus of criminal activity and the activity of a judicial system involving Indians is at the state level.

The next series of descriptive items moves beyond the background of the offender and begins to concentrate on aspects of the last chronological offense for which the offender was imprisoned during the 1966

Table 6

State Prison Incarcerations

Incarcerations	Number	Percentage
1	135	52.12
2	78	30.12
3	21	8.11
4	12	4.63
5	7	2.70
6	3	1.16
7	1	0.39
8	2	0.77
Total	259	100.00

Table 7

Federal Prison Incarcerations

Incarcerations	Number	Percentage
None	218	84.17
1	31	11.97
2	6	2.32
3	2	0.77
4	1	0.39
5	1	0.39
Total	259	100.01

to 1971 time span under study. A prime consideration was the type of offense for which the Indian was sentenced to Montana State Prison.

Turning to crimes that were committed against property first, the modal offense was first degree burglary occurring in 56 cases. The second most frequent offense was forgery, with 40 cases reported. Grand larceny was third with 31 cases. In all, 81.31 percent of the Indians were convicted of offenses committed against property.

Crimes against the person, which are generally more violent, were the offenses for which 16.99 percent of the Indians were incarcerated. The most frequently occurring offense in this category was second degree assault, reported in 20 cases. Manslaughter was second with eight violators. Rape and sex offenses were very infrequent with only four rapists incarcerated during the time period of the study.

These findings were surprisingly consistent with the findings of Farber, Odeen and Tschetter. Their study of the Indian in the South Dakota State Prison showed 82.6 percent of the Indians had committed crimes against property, while 17 percent had committed crimes against the person.¹ Wright, too, found that 78.4 percent of the 250 parole violators had been confined for property crimes and 21.6 percent for crimes against the person.² If a popular notion existed that the Indian offender was a violent murderer or rapist, that notion was in error. The Indian offender is not a spectacular criminal inflaming a public and

¹Farber, Odeen and Tschetter, op. cit., p. 46.

²Wright, op. cit., p. 54.

making great newsprint, but is a less flamboyant burglar, check writer, or thief caught in the bounds of the Montana legal system.

The median age at which the Indian offender entered the prison at Deer Lodge for the offense mentioned above was 28.33 years. (The mean age was a similar 28.18 years.) The large difference between this age and the age at first felony conviction, median 21.61 years, reflects the recidivism of the offenders. That is, the Indian offender was going to prison more than once (Table 4 to 7). His first offense was at about age 22, but the offenders were about age 28 when they entered the state prison for their last recorded offense. These results are again similar to Farber, Odeen and Tschetter's mean age of 25.6 and median age of 28 years for South Dakota's Indian inmate population.¹ Prisoners in federal institutions in 1967 and 1968 had a mean age of 30.3 years for the total prison population.² However the mean age for the not native born federal inmate was 28.5 years.³ Indian offenders in Montana were slightly younger than the overall federal inmate, but about the same age as Indians and immigrants elsewhere.

An interesting characteristic was the plea the Indian offenders entered to the charges for their last offense and is graphically pointed out in Table 8. The extremely high percentage of guilty pleas is in accord with the diminishing use of the adversary system of justice. The

¹Farber, Odeen and Tschetter, op. cit., p. 45.

²U.S. Dept. of Justice, Bureau of Prisons, Federal Bureau of Prisons Statistical Report: Fiscal Years 1967 and 1968 (Washington D.C.), p. 2.

³Ibid., p. 3.

Table 8

Plea to Last Offense

Plea	Number	Percentage
Not Guilty	10	3.86
Guilty	249	96.14
Total	259	100.00

absence of jury trials led Skolnick to write "...the system of administering criminal justice in the United States is a system of justice without trial."¹ It was not known from the data whether or not the plea of guilty was entered originally by the defendant or it it had been changed to a plea of guilty later as a part of a "bargain" with the court.

Table 9 illustrates the numbers of co-defendants the Indian offenders had in their cases. From the table it is apparent that either most of the crimes for which the Indian offenders were sentenced were committed alone or that the offenders in prison were taking the "raps", the conviction, alone. The table indicates that 100 of the Indians had at least one partner in the crime. Further analysis of the data revealed that only 17 of the 100 had co-defendants who received a greater sentence than they did.

An important variable to examine in the length of sentence that the Indian offenders had been given for the last offense. The range was from one year to 36 years, with one case being unknown. The mean sentence length for the 258 Indians was 4.40 years. The median length was 3.71 years. The modal sentence length was two years. In round figures, four years is a good measure of the sentence length. Compared to other studies, the Indian offender in Montana was actually receiving less severe sentences than other offenders. For example, the mean sentence length in federal prisons in 1968 was nearly 6.4 years.² The median

¹Jerome H. Skolnick, Justice Without Trial: Law Enforcement in Democratic Society (New York: John Wiley and Sons, Inc. 1966), p. 13.

²Federal Bureau of Prisons Statistical Report: Fiscal Years 1967 and 1968, op. cit., p. 2.

Table 9

Total Number of Co-Defendants

Co-defendants	Number	Percentage
None	158	61.24
1	59	22.87
2	26	10.01
3	8	3.10
4	3	1.16
7	3	1.16
11	1	0.39
Total	258*	99.93

*One case is unknown.

sentence length for court commitments to state prisons, including both determinate and indeterminate sentences, was about 5.2 years.¹

Examining the sentence length of Indians in another light, the Federal Bureau of Prisons National Prisoner Statistics points out that in Montana in 1950 the median sentence length for all prisoners was 27.1 months. In 1956 the median sentence length in Montana rose to 38.6 months. In 1960 it was up to a median length of 44.8 months.² Computed from this 1972 research using all the offenders (Indian and white) the median had again increased to 45.24 months. The Indian offender with a median sentence of about 44.52 months (3.71 years) was being sentenced to prison for terms very similar to the total Montana inmate, but much longer than was true in 1950, and shorter than was found elsewhere in the nation.

Perhaps a slightly better measure of the severity of the sentences handed out to the Indian offenders was the actual length of time the Indian offenders remained in prison until they were released on parole. In all 206 of the 259 Indian offenders left the Montana institution as parolees. Fifty-six Indians either were not granted a parole or chose to serve their terms until the mandatory release date so that they would have no parole supervision to contend with when released. The longest time any one Indian offender served before receiving a parole and becoming a parolee was 121 months. The mean time served before first release on parole was much less and was 14.47 months. The median time served, which is perhaps a better measure, was only 9.91 months. Compared with

¹U.S. Dept. of Justice, Bureau of Prisons, National Prisoner Statistics: Characteristics of State Prisoners 1960 (Washington, D.C.), p. 43.

²Ibid., p. 56.

others penal institutions the Montana Indian parolee is one of the very earliest releasees in the nation. The Indian parolee spends just¹ about three-quarters of one year in prison prior to his release as compared with about 18.2 months served prior to parole in federal institutions.¹ Indeed the median time served in state institutions across the United States was 20.9 months compared with 9.91 months in Montana.² Early release from Montana State Prison has had a long history and is nothing new.

In 1954 in Montana the median time served to parole was reported to be 15 months. By 1960 the median time served had dropped to 10.9 months. Of all 48 states only one other state, Vermont, was paroling offenders sooner than Montana. Montana paroles inmates in a median of 9.1 months.³ It is possible to state that the Indian offender in Montana was one of the earliest offenders to walk back outside of the prison walls and be back on the street. Half of the Indian offenders were paroled in less than one year and 75 percent were released within 20 months.

Since the parole officer reports followed the Indian parolee after release it was possible to attain a slight composite of the life of the offender back on the street again. Most of the Indian parolees were released to supervision within the borders of the state of Montana. Only 42 of the 206 parolees were released to another state or deported to Canada. The location of parole has more meaning when examined with reference to the county in which the offender was tried and the county to

¹Federal Bureau of Prisons Statistical Report: Fiscal Years 1967 and 1968., op. cit., p. 3.

²Characteristics of State Prisoners: 1960, op. cit., p. 26.

³Ibid., p. 67.

which he was later paroled.

The modal county of trial for Indians was Lake County, from which 37 of the offenders were sentenced. This only makes sense in view of the application of Public Law 280 to the Flathead Reservation, which is largely Lake County. The second most frequent county of trial for Indians was Hill County, in which the Rocky Boy Reservation is located. The third most frequent county of trial was Cascade County from which 26 Indians were sentenced. Cascade County includes a portion of the Crow Reservation. Blaine and Rosebud Counties both sentenced 20 Indians to prison. Blaine County contains a large portion of the Fort Belknap Reservation and Rosebud contains nearly half of the Norther Cheyenne Reservation. These five counties sentenced over one half of the Indian offenders found in this study.

When the 206 parolees left prison, only 51 of them returned to the same county from which they were sentenced. Once again Lake County led, receiving back 17 of the 37 sent to prison. Second was, again, Hill County accepting six returnees out of the 30 sentenced. Only five Indian parolees returned to Cascade County, while 21 did not return. Blaine County received back five parolees and Rosebud County received four. In summary, of the 164 Indian parolees supervised within Montana, less than one third (51) were paroled to the same county from which they were convicted and sentenced to prison.

The reports of the parole officers also indicated the place of residence that the parolee took up immediately upon his arrival at his place of parole. The data on place of residence was also available for those parolees located outside of the state through reports rendered under

the Interstate Compact. Table 10 represents the place of residence for all of the 206 parolees. The releasees that Glaser studied reported 29 percent living with their parents, 24 percent with relatives, three percent with friends, 12 percent lived alone and 32 percent lived with their wife and children.¹ It was immediately noticeable that the Indian offender does not follow Glaser's pattern and were less represented in all categories other than living alone. The greatest magnitude of differences was in residence with an offender's wife and dependents; a difference between 7.77 percent in the present study and 32 percent in Glaser's study.

One of the functions of a parole officer is to supervise the parolee and as need be recommend that a parole be revoked if the parolee is not meeting the stated terms of the parole period. The Indian parolee does not stand a good chance at making a complete or successful parole as can be seen in Table 11. The table not only indicates the number and percentages of parolees who violated parole or who were successful at parole, but indicates the time period in which the parole violators were being returned to prison.

Table 11 shows that contrary to nationwide statistics, 51.46 percent of the parolees were violating their parole and were returned to Montana State Prison as compared to an approximate one third return rate nationwide.² The period of highest mortality for the parolees was from one to three months after release on parole. This was not similar to Wright's findings for 250 Montana parole violators in 1959. He found the period of highest violation to be within the first three days (28

¹Glaser, op. cit., p. 249.

²The Challenge of Crime in a Free Society, op. cit., p. 45.

Table 10

Residence on Parole

Residence	Number	Percentage
Alone	37	17.96
Sponsor*	32	15.53
Parents	30	14.56
Relatives	30	14.56
Halfway House	20	9.71
Spouse and Dependents**	16	7.77
Unknown	13	6.31
Institutions***	12	5.83
Detainers	12	5.83
Friends	4	1.94
Total	206	100.00

*A sponsor provides employment, room and board. In Montana many sponsors are ranchers.

**If there are any dependents.

***Non-penal institutions such as a state hospital.

Table 11

Outcome of Parole

Outcome		Number	Percentage
VIOLATORS	Violated in:		
	0-3 Days	5	2.43
	4-30 Days	13	6.31
	1-3 Months	31	15.05
	4-6 Months	25	12.14
	7-12 Months	22	10.68
	over 1 year	10	4.85
NON-VIOLATORS	No Violation at time of study	43	20.87
	Discharged from Parole	50	24.27
Unknowns		7	3.40
Total		206	100.00

percent) and reported declining violations after three months, while 3.2 percent remained on parole for over one year.¹ The Indian parole violator was managing to stay out longer but his last stand was found from one to three months on parole. Only 24.27 percent of the Indian parolees survived the parole period successfully. Another 20.87 percent still had the opportunity to successfully complete parole as no violations had been recorded at the time of the study. A combination of these two categories yielded an optimistic 45.14 percent completing a successful parole period. Since some of the parolees who did not have a violation recorded at the time of the study are bound to fail, the percentage of successful paroles is discouragingly low.

The final descriptive item provides a description of the reason that the 106 parole violators had their parole revoked. By far the most significant reason for revocation was violation of the parole rules of Montana. Called a "technical violation", 82.08 percent of the returnees were technical violators. Violation of parole for new felony offenses, which included violation for technical reasons in lieu of prosecution for a new felony, constituted 17.92 percent of the parole violations. The Indian offender in Montana who has had his parole revoked was much more likely to have had it revoked for technical violations only. In light of the problem indicated with alcoholic beverages, most often the violations involved parole rules number one and number six, as follows:

Rule one. The parolee or probationer shall respect
and obey the law and at all times be a
good citizen.

¹Wright, op. cit., p. 59.

Rule six. The parolee shall not use to excess, beer or intoxicating liquors. He or she shall not buy, sell, use, or be in possession of dangerous drugs.

These 34 items have provided a composite picture of the Indian offender and have, included in them, data on the 13 female Indian offenders found in this study. Generally the female Indian offender closely resembled the characteristics of the male Indian offenders in prison. There were some differences between the sexes that did stand out and warrant examination.

The most obvious difference was the small number of females found in the Montana State Prison system. There were a number of reasons for the small quantity of female offenders. On one hand, the reduced number of females was considered to be an outgrowth of male chivalry. That is, the male offender covers up for female accomplices and will take the "rap" (the sentence) for them.¹ Though chivalry may exist in criminals, the reduced number of females was, on the other hand, probably the result of biases present throughout the judicial system. That is, the female is felt to be a passive member of the society whose role centers about the home, making bread and being bred, and caring for the results of that activity rather than being engaged in criminal activity. Females are less likely to be considered criminal and more likely to remain out of the criminal judicial system. Even when a female is processed through the judicial system, there is a hesitancy by the system to send women to prison. Women are provided with alternatives to prison

¹Otto Pollak, The Criminality of Women (Philadelphia: University of Pennsylvania Press, 1950), p. 151.

so that they may remain in free society to either maintain an existing household or seek to create a new one.

In Montana there is an additional impetus to keep females out of the judicial system as there are no good facilities for the detention and security of female convicts. Currently in Montana the female offenders are secured in the basement of the Board of Pardons' building. To incarcerate women in the basement requires additional work loads and shifting schedules for the matrons, who hold other jobs in the prison as well. There is also some inconvenience caused in the Board of Pardons' office. The sentencing of female offenders is further complicated since females with long term sentences obviously can not be confined in a basement for several years. The long term offenders are sent to a women's facility in the state of Nebraska.

Another difference between the sexes was found in their home and marital situation. The female offender generally came from a much smaller family than the male. While the male offender had a median of about four natural siblings, the female offender had but two natural siblings. In marriage, none of the female offenders claimed to be married at the time of the study. (One woman was widowed and one was in a common law marriage.) Over 30 percent of the women claimed to have never been married and 38 percent claimed to be divorced. By contrast, other studies found most of the female offenders to be married. Rose Giallombardo found 31.5 percent to be married.¹ Otto Pollak claims most criminal

¹Rose Giallombardo, Society of Women: A Study of a Women's Prison (New York: John Wiley and Sons Inc., 1966), p. 86.

women were also married.¹ Although the sample was small, it appears that the female Indian offender is not following the pattern found in other ethnicities and other regions of the nation. A small measure of the difference is illustrated by the fact that seven of the 19 white female offenders in Montana State Prison were married (37 percent).

There were differences in the educational level the females completed as well. The median education for the Indian women was 7.84 grades. This was somewhat lower than the educational achievement of the general Indian offender (median 9.79 grades) and just slightly lower than the median educational level found by Giallombardo.² In state correctional facilities in 1960 the median educational achievement of females was 8.7 grades, about one year more than the Indian female offender was completing.³

The age at first felony conviction for the women was nearly six years after the age of first felony conviction for the general Indian inmate. Whereas many of the males had been in prison at least twice, the majority of the women were in prison for the first time. Only two of the 13 females had a prior felony conviction. None were ever in a federal institution. These results were similar to the results of the study done by Giallombardo.⁴

As with the males, the females were being sent to prison most often for forgery, then for auto theft and grand larceny. The age at

¹Pollak, op. cit., p. 106.

²Giallombardo, op. cit., p. 87.

³U.S. Dept. of Commerce, Bureau of the Census, U.S. Census of Population: 1960 Subject Reports-Inmates of Institutions (Washington, D.C.), Table 25.

⁴Giallombardo, op. cit., p. 79.

which they enter prison for this offense was, as a median, 26.5 years. Giallombardo found a median age at commitment for women in her study to be 30.5 years.¹

It was interesting to note as a current trend in criminal justice, that 100 percent of the women pled guilty. When they were sentenced to prison, it was for a short term. The median sentence length for female Indian offenders was 2.87 years. This was much less than the 3.71 years for males. The short sentence for females was, parenthetically, also true of white females sent to prison.

Of the 11 women parolees, five violated the terms of their parole and were returned to prison. One was still on parole at the time of the study and five were discharged from parole. About 45 percent of the women violated parole, slightly less than for the general Indian offender.

Some other differences between the sexes were found in the number of arrests, and residence on parole. As expected, females were arrested less often. For residence, 19 of the males were released to halfway houses on parole, while only one female was paroled to a halfway house. Twenty-nine males were paroled to their parents but only one female was found in the same category.

It was particularly evident that the legal system seldom processed women. It was also evident that the few that were processed had simply pled guilty and the court may have had little other recourse than to impose a prison sentence. Even when a woman must be imprisoned in the state of Montana it was for a relatively short term and she will be

¹Ibid., pp. 82-83.

out on parole in three quarters of one year. It was also obvious that there was a lack of facilities for the female offender in that state. The basement of the Board of Pardons' building is not adequate.

This study has noted that the female was not just a copy of the male offender, though some differences are small, it also points out that very little is known of the few female offenders that were found in Montana and the subject is very open for greater examination in the future.

The traits of the general Indian offender presented in this chapter give some indication of traits and characteristics of the individual that the state has nominated to the class of deviants. The prison community of Indians represents configurations of characteristics that were acted on, or reacted towards, by the state in addition to action against any particular crime the offender may have committed. As some district court judges pointed out in personal interview, many of these traits were indicative of chaos and a lack of stability in the lives of the offenders. The offender possessing these traits were more often sentenced to prison than offenders not possessing the traits. That is, some district judges pointed out certain characteristics of the Indian offender indicate a lack of stability or responsibility in the offenders and those offenders exhibiting these characteristics would receive prison sentences rather than probation or suspended sentences. For example, the lack of a wife, lack of dependents, little military service, poor military discharges, alcoholism, early juvenile delinquency and leaving home at an early age as well as an early age of first felonious behavior, indicated a lack of stability. These persons were felt to be the worst risks for probation. They were sentenced to prison since they "probably" could not make a successful probation period and would be sent to

prison anyway. The judges were quick to point out that selection of an offender for prison in this manner was not an overt act but rather an unconscious process that may occur in the judicial system.

In addition to the constellation of traits indicative of instability in the lives of the offenders, the Indian offenders also possess traits that result from the legal process. That is, the general Indian offender was sentenced on the average for terms of 4.40 years. This trait was derived from the legal process rather than from the social development of the offender. Similar traits that stand out were the release of the Indian offender on parole in about 10 months. After a short time out on the streets as a parolee, from one to three months, he was violated and returned to prison for technical reasons. Just over 50 percent of the parolees were returned to prison. The noticeable lack of jury trials was also pointed out in this chapter. Other salient features of the chapter were the youthfulness of the Indian offender, the early juvenile delinquency, the relatively short sentence, and the absence of female offenders.

The chapter has indicated general traits found in the Indian offender deposited in prison. District court judges pointed out some traits that aided their selection of certain persons for prison sentences over other offenders. The same judges, however, must also act on white offenders who come before them. If we examine the white offenders and compare them to the Indian, would we expect them to be similar? Chapter 4 compares the two groups through statistical tests to see if indeed they are or are not similar to each other as Montana State Prison inmates.

Chapter 4

THE INDIAN AND WHITE OFFENDER IN MONTANA

With the demography of the Indian offender as a background, the second concern, a test and comparison between the Indian and the white offender in prison, can commence. The characteristics of the Indian offenders have been presented, but were they similar, are they attributes of the white offenders as well? The question is asking, are those who have been through the "sieve" of the Montana judicial system alike? To answer the question the hypothesis was presented which stated that there is a difference between the Indian and white offender on the 16 items that were subjected to a statistical test. The answers were determined by testing the null hypothesis, that there is not a statistically significant difference on selected items between Indian and white offenders as known through data available at the Montana Board of Pardons, July 1, 1966 to June 30, 1971. The decision to accept or reject the null hypothesis was made by using the chi-square test to compute a test statistic that was critical at the $P=.05$ level of significance and at the proper degrees of freedom for each of the items tested. The chi-square test was applied to all 16 items listed in chapter 3, in addition to several specific offenses. A chi-square table was prepared for each of the tests. The tables express the observed as well as the expected or theoretical frequencies for each cell in the tables. The expected (theoretical) frequencies were indicated by parenthesis and placed

below observed frequencies. The tables also indicated at the bottom the number of unknown cases present for each ethnicity. The total obtained (calculated) chi-square value was also presented at the bottom of the table, noting as well the proper degrees of freedom for that table.

All decisions were made on the basis of the obtained value of chi-square and a beginning answer to the question of the similarity of the two groups of offenders was achieved.

Earlier Table 1 evidenced that the American Indian offender in Montana was, in the majority, an unmarried person. Was this common to the white offender as well? The first application of the hypothesis was to marital status. In condensed form, the specific null hypothesis for marital status was, that there is no difference between Indian and white offenders in marital status at intake into Montana State Prison.¹ The observed and theoretical frequencies used to compute the chi-square value was presented in Table 12. The obtained chi-square value for marital status was 55.399. At five degrees of freedom and at the $P=.05$ level of significance, the obtained value of chi-square must be at least 11.070 or larger to reject the null. For marital status, then, the obtained value of 55.399 was larger than 11.070 and the null hypothesis was rejected. Thus it may be that there are differences between the two ethnicities with regard to marital status at intake into prison.

The difference may be due in part to the age distribution of the Indian offenders (See Table 21). The Indian offenders were younger than

¹For convenience the null hypothesis is referred to as the null of no difference rather than restating it in its entirety for each item.

Table 12

Marital Status at Intake to Prison by Ethnicity

Ethnicity	Single	Married	Divorced	Separated	Common-law	Widow	Total
Indian*	135 (100.37)	28 (46.93)	53 (77.92)	18 (17.51)	20 (8.76)	4 (6.51)	258
White**	312 (346.63)	181 (162.07)	294 (269.08)	60 (60.49)	19 (30.24)	25 (22.49)	891
Total	447	209	347	78	39	29	1149

*Indian does not include one unknown.

**White does not include four unknowns.

Chi-square was 55.399

5 degrees of freedom

the white offenders and, hence, were less likely to be married. As one offender said when asked about his marital status, "haven't been out that long." Additionally, the difference may partially be a reflection of the judicial processing in that the young single white offender, the equivalent of the young single Indian offender, was not found in prison but was being given alternatives to imprisonment through suspended sentences. Marriage is used as an indicator of stability by the courts.

It was also noticeable in Table 12 that there was a large difference between expected and observed frequencies with regard to common-law relationships. Once again the difference may be related to the age structure of the two offender groups. But the difference may be a ramification of cultural differences. For whites common-law status is not regarded as one of the most acceptable forms of marriage. The Indian cultures may have no such stigma, nor need the formal, legal marriage rites of the white society.

Table 13 presents the observed and theoretical frequencies used for the test of the null hypothesis that there is no difference between the Indian and white offenders in the number of dependents they have. Examination of Table 13 shows that the obtained value of chi-square was 7.122, and was greater than the chi-square value of 5.991 required at two degrees of freedom for rejection on the null. The null hypothesis was, therefore, rejected. Differences in the number of dependents may indeed exist.

The differences were the greatest in the cells pertaining to the presence of two or three dependents, as well as in the cells for zero and one dependents. If Table 13 is examined in terms of Table 12, the

Table 13

Number of Dependents by Ethnicity

Ethnicity	0-1	2-3	4 or More	Total
Indian	203 (190.41)	30 (44.22)	26 (24.37)	259
White*	641 (653.59)	166 (151.78)	82 (83.63)	889
Total	844	196	108	1148

*White does not include 6 unknowns.

Obtained Chi-square was 7.122
2 degrees of freedom.

the differences were obviously related to differences in the marital status of the offenders. In Table 13 it was observable that fewer Indian inmates have two or three dependents than was theoretically expected. It is plausible that the Indian offenders who do have two or three children are also the offenders who are or who at one time were married. Thus, even the Indian offenders who ever could have been married have fewer dependents than the comparable white. Once again the difference may be an outgrowth of the age of the Indian offenders. The young Indian has not, just as with and related to marriage, had time to develop large families.

It was brought out in the general description of the Indian offender that he was completing higher grade levels in school than the overall national offender, but that he was completing fewer grades than the general population of the state of Montana. Table 14 contains the frequencies used to calculate chi-square values to see if the difference between the Indian offender education and the median education of the state carried over into differences between the Indian and white offender in prison. At three degrees of freedom a value of chi-square must be 7.815 or larger to be significant at the $P=.05$ level. As Table 14 shows, the obtained value of chi-square was 16.494 and the null hypothesis of no difference in education was rejected. Differences in inmate education may exist.

It is obvious from the cells of Table 14 that the difference results from the Indian offender dropping out of school at earlier grade levels than the white offender. More Indians were completing the lower grades, from zero to nine grades, than were expected, but fewer were completing grades 10, 11, and 12. In this vein Glaser notes, "careers

Table 14

Education Completed by Ethnicity

Ethnicity	0-6 grades	7-9 grades	10-12 grades	Over 12 grades	Total
Indian	25 (16.62)	111 (98.16)	118 (130.29)	5 (13.93)	259
White*	49 (57.38)	326 (338.84)	462 (449.71)	57 (48.07)	894
Total	74	437	580	62	1153

*White does not include 1 unknown.

Obtained Chi-square was 16.494
3 degrees of freedom.

in delinquency and crime tend to go hand in hand with retardation in educational endeavors."¹ He goes on to say that this is not due to deficiencies in intelligence but "...is due largely to lack of motivation to perform well in school..."² To Glaser, "the lack of past educational effort generally reflects an interruption of their schooling by delinquent and criminal activity and by incarceration."³ This may be further reflected in the early age of first juvenile offense and the early age of first felony conviction by the Indian offender.

The null hypothesis of no difference between Indian and white offenders with regard to military service record was tested with the data from Table 15. The value of chi-square obtained using the frequencies presented was 25.493. At five degrees of freedom a value of chi-square of 11.070 or more was significant at the $P=.05$ level. The null hypothesis was rejected.

By far the greatest influence on the difference was from the number of Indian offenders who had no military service. The lack of military service and the difference from the white offender may, in part, be due to such factors as the age at which the Indian offender becomes a juvenile delinquent and the educational level of the Indian offender. A record of delinquency can preclude one from military service. The lack of educational achievement is also a factor used to reject a young man from military service. No data was recorded in the

¹Glaser, op. cit., p. 174.

²Ibid., p. 174.

³Ibid., pp. 174-175.

Table 15

Military Service Record by Ethnicity

Ethnicity	Army	Navy	Marine	Air Force	Other*	No Service	Total
Indian**	58 (64.46)	16 (28.28)	11 (12.28)	11 (16.66)	4 (9.65)	146 (114.67)	246
White***	236 (229.54)	113 (100.72)	45 (43.72)	65 (59.34)	40 (34.35)	377 (408.33)	876
Total	294	129	56	76	44	523	1122

*Other includes Coast Guards, National Guards, Reserves, and multiple service.

**Indian does not include 13 females.

***Whites does not include 19 females.

Obtained Chi-square was 25.493
5 degrees of freedom.

study of attempts to enlist or of draft rejection, but the author can recall many statements such as, "Well, I always wanted to join, even took a physical once, but I never heard anymore. Maybe it was my record." It is also possible that having prior military service and a good discharge for that service, was used as a criterion indicative of the ability to adjust and of socialization, so that persons with prior service were more likely to be placed on probation and less likely to be in prison.

Table 16 presents the frequencies used to compute chi-square to test the null hypothesis of no difference between the two groups for the type of discharge from their military service, for those offenders who ever were in the military. The computed chi-square for this table was equal to 0.825. In order to be significant at one degree of freedom an obtained value of chi-square must be at least 3.841. The null can not be rejected for this item. It seems, then, that similar portions of the offenders who do enter the military, received similar types of discharges. Still, over one third of each group had been the recipients of less than honorable discharges which may reflect some inability in the offenders to adapt to military life. It is often military policy to issue less than honorable discharges after one has been convicted of a civil felony, if he was in the military at the time. The policy may be reflected in the uniformity between Indian and white offenders and their discharges from the service.

One aspect of instability in some of the offenders lives is the use of drugs. The use of drugs, including marijuana, is commonly felt to go hand in hand with crime and give rise to sub-cultures of escapists

Table 16

Type of Military Service
Discharge by Ethnicity

Ethnicity	Honorable General Medical Discharge	Less Than Honorable Discharge	Total
Indian*	54 (57.85)	38 (34.15)	92
White**	300 (296.15)	171 (174.85)	471
Total	354	209	563

*Indian does not include 8 unknowns.

**White does not include 28 unknowns.

Obtained Chi-square was 0.825
1 degree of freedom.

or retreatists surviving only through illegitimate means. Table 17 contains the data used to calculate chi-square for known drug use. As can be seen, the value of chi-square was 1.821. The required value that the chi-square statistic had to attain was 3.841, at one degree of freedom, to be significant. The null hypothesis of no difference between offenders in their known drug use can not be rejected.

The indicated low known usage was perhaps a reflection of concealment of the use of narcotics by the inmates, rather than actual low use. It was advantageous for inmates to conceal drug use from the prison staff. Drug use was expected to be much higher among the Indian inmates since the use of certain drugs is permissible as a part of the Native American Church. It turned out, however, that none of the Indian inmates were members of the Native American Church. Social disorganization and culture conflict were also thought to produce high drug use, but the data did not bear this out. On the basis of the test statistic, there may be no difference between the Indian and white inmate in the extent of known drug use. The low drug use may be attributed to the cost and risks involved in obtaining drugs. Alcohol is much more readily available.

The use of alcohol to problem levels was very different from the problem of narcotic use. Table 18 exhibits the very high observed frequency of Indian offenders with an alcohol problem indicated, surpassing the theoretically expected frequencies. Computations from the table yielded a chi-square value of 31.705. From the table of the distribution of chi-square at one degree of freedom, the obtained value of chi-square needed to be 3.841 or greater to reject a null. In this case, the null

Table 17

Known Drug Use by Ethnicity

Ethnicity	Known Use	No Known Use	Total
Indian*	21 (26.82)	235 (229.18)	256
White**	98 (92.18)	782 (787.82)	880
Total	119	1017	1136

*Indian does not include 3 unknowns.

**White does not include 15 unknowns.

Obtained Chi-square was 1.821.
1 degree of freedom.

Table 18

Alcohol Problem by Ethnicity

Ethnicity	Problem	No Problem	Total
Indian	200 (161.39)	59 (97.61)	259
White*	511 (549.61)	371 (332.39)	882
Total	711	430	1141

*White does not include 13 unknowns.

Obtained Chi-square was 31.705
1 degree of freedom.

hypothesis of no difference in alcohol problems was rejected.

The statistic indicated that the Indian offender had a greater problem with alcohol than does the white offender. This statistic does not say that alcohol was involved in the commission of the crime or was the precipitant of the crime, but rather points out that the offender has had or yet has some problem with alcohol indicated in his records. Studies have often indicated the problem alcohol can pose for Indians. The high arrest rate for drunkenness and disorderly conduct among Indians has given birth to a notion of the drunken Indian that has, sadly, almost become traditional.¹ It should be said, though, that the Indian has been subjected to a 132 year prohibition that did not cease until 1953.² Prohibition for the rest of America was hardly as long. Whites have had a greater chance to attempt to pattern their responses to drunkenness. To be a drunken Indian appears to be worse than to be a drunken white man in white society. At the same time Indian cultures do not exhibit as many sanctions against drunkenness.³ It is mainly only in the white society outside the reservation boundaries that drunkenness is a condition warranting arrest. Nonetheless on the basis of the test statistic the Indian offender was not similar to the white offender with regard to indications of alcohol problems.

Continuing, Table 19 presents data for the age at which an offender's first known juvenile offense was recorded. The computed value of

¹Gerald Littman, "Alcoholism, Illness, and Social Pathology Among American Indians in Transition", American Journal of Public Health, 60 (Sept. 1970), 1770.

²Reasons and Kuykendall, op. cit., p. 91.

³Littman, op. cit., p. 1770.

chi-square was 27.238. At five degrees of freedom an obtained value of chi-square must be 11.070 or greater to be significant. In this case, for this item, the null hypothesis of no difference at the age of first juvenile offense was rejected.

The table shows that not only were there fewer Indians than expected without a juvenile record, but that more Indians had offenses recorded at all but the 10 year to 11 year age interval. The magnitude of the differences were greatest in the cells for no offense and in the 16 to 17 year interval. The increase in the number of juvenile offenders in the 16 to 17 age group is related to the ages when they leave school and home. It is the age they seek independence and symbols of independence. As Glaser writes, "it is at this age, when they are least prepared to acquire these items by legitimate means, that they most often engage in the simple felonies directly addressed to procuring money or to getting types of property which they most desire--notably automobiles. Although auto theft, burglary, and larceny are committed by persons at later ages, this type of offense is clearly a phenonemon most characteristic of adolescence."¹ (Burglary, larceny and auto theft accounted for 125 of the convictions of the 259 Indians.) The problem appears to be that more Indians were caught for their adolescent delinquency when they leave home and school and possibly turn to illegitimate means.

The null hypothesis that there is no difference between Indian and white offenders in the number of arrests was tested using the frequencies in Table 20. At three degrees of freedom the value of the

¹Glaser, op. cit., p. 320.

Table 19

Age in Years at First Juvenile Offense by Ethnicity

Ethnicity	None	1-9	10-11	12-13	14-15	16-17	Total
Indian*	121 (151.06)	6 (4.20)	2 (4.20)	21 (13.47)	36 (26.50)	45 (31.58)	231
White**	563 (532.94)	13 (14.80)	17 (14.80)	40 (47.53)	84 (93.50)	98 (111.42)	815
Total	684	19	19	61	120	143	1046

*Indian does not include 28 unknowns.

**White does not include 80 unknowns.

Obtained Chi-square was 27.238
5 degrees of freedom.

obtained chi-square must meet or exceed 7.815 to attain significance; the obtained value of chi-square in this test was 9.085. The null hypothesis was, therefore, rejected. Further examination of the table shows that the cells having the greatest effect upon the value of chi-square were the six to 10 arrests interval and the 11 to 15 arrests interval. The presence of Indian offenders was greater than expected in the six to 10 interval and was less than expected in the 11 to 15 interval. This indicated that Indian offenders were arrested less often than white counterparts. This difference was not in the direction that was anticipated by recalling the high arrest rate of Indians. It may be, however, that the difference really reflected differences not only in the age structure of the Indian offenders but reflected some of the processing of the judicial system as well. That is, the Indian offender was generally young and had not developed an extensive record. He had a shorter "rap sheet". Additionally, the frequency of whites with greater numbers of arrests may be due to the probability that the whites sentenced to prison were the "worst risks" and had the worst records. The white offender with the shorter arrest record may be placed on probation rather than imprisoned. Then too, the Indian offender may have had many additional arrests than were noted in the files of the Board of Pardons since they had occurred on reservations and were removed from the jurisdiction of the state and possibly the records of the FBI as well.

The differences in age of the offenders for the two ethnic groups has been pointed out many times previously. Table 21 exhibits the difference in a test of the null hypothesis that there is no difference in the age at the first felony conviction of the two groups. As can be seen,

Table 20

Number of Arrests by Ethnicity

Ethnicity	1-5	6-10	11-15	16 or more	Total
Indian	131 (133.54)	75 (60.60)	26 (37.48)	28 (27.38)	259
White	465 (461.46)	195 (209.40)	141 (129.52)	94 (94.62)	895
Total	595	270	167	122	1154

Obtained Chi-square was 9.085
3 degrees of freedom.

Table 21

Age at First Felony by Ethnicity

Ethnicity	18-22	23-27	28-32	33 or More	Total
Indian*	159 (138.60)	50 (49.72)	20 (26.32)	23 (37.35)	252
White**	457 (477.40)	171 (171.27)	97 (90.67)	143 (128.65)	868
Total	616	221	117	166	1120

*Indian does not include 7 unknowns.

**White does not include 27 unknowns.

Obtained Chi-square was 12.966
3 degrees of freedom.

the obtained value of chi-square from the table was 12.966. At the required three degrees of freedom the value of chi-square necessary to enable rejection must be at least 7.815 and, therefore, the null hypothesis was rejected.

It is observable that the cell for the age group 18 to 22 had an observed frequency of Indians that was more than was expected by chance. It was also noticeable that fewer Indians were observed in the eldest age group than was expected. Once again this may be a reflection of the age of the white inmates who were entertaining careers in crime and hence would not be considered for probationary status. (The converse may also affect the age distribution in that the young white offender was granted probationary status.)

That there is no difference between Indian and white offenders in the total number of felonies, was the null hypothesis tested utilizing the data in Table 22. Since there was an obtained value of chi-square of 13.379 and the value necessary at five degrees of freedom was 11.070, the null hypothesis was rejected.

The table indicates that there was an over representation of the Indian offenders who have one or two felonies. After two falls at the "big house" (two commitments to prison), the Indian was observed less frequently than was expected, and more whites were found. Once again this may represent the worst risk white offenders who have taken many trips to prison while the Indian was the first time or second time offender.

Chapter 4 described the Indian offender as being largely convicted of property offenses. While there was no statistically significant difference between Indian and white for convictions of crimes

Table 22

Total Number of Felonies by Ethnicity

Ethnicity	1-2	3-4	5-6	7-8	9-10	Over 10	Total
Indian	191 (172.14)	46 (51.62)	19 (23.12)	2 (6.96)	1 (3.82)	0 (1.35)	259
White	576 (594.86)	184 (178.38)	84 (79.88)	29 (24.04)	16 (13.18)	6 (4.65)	895
Total	767	230	103	31	17	6	1154

Obtained Chi-square was 13.379
5 degrees of freedom.

against property compared to crimes against the person, Tables 23-A to 23-J present data used to test for any differences between specific offenses.

Table 23-A concerns robbery (and attempted robbery) and receiving stolen property. Robbery is an active, daring attempt to procure some gain. Receiving stolen property, on the other hand, is a passive offense lacking a perpetrator-victim relationship. As can be seen from Table 23-A the computed value of chi-square was 6.736, and the null hypothesis of no difference between Indian and whites for convictions for robbery or receiving stolen property was rejected. At one degree of freedom the value of chi-square required for significance was 3.841.

The majority of the contribution to the significance of this item came from the greater number of Indians convicted of receiving stolen property. The difference may, once again, be related to differences in age. Glaser states, "...young persons are often arrested on stolen property charges when suspected of larceny or burglary if the evidence upon arrest is only that they possess stolen goods."¹

Table 23-B was used to test the null hypothesis of no difference between Indian and whites with regard to robbery and forgery offenses. The obtained chi-square of 3.044 did not allow rejection at one degree of freedom. Differences between the numbers of whites or Indians convicted of robbery or forgery can not be assumed.

Similar results were obtained when bad check offenses, such as uttering and delivering a fraudulent check or nonsufficient fund checks,

¹Glaser, op. cit., p. 321.

Table 23-A

Robbery and Receiving Stolen Property by Ethnicity

Ethnicity	Robbery	Receiving Stolen Property	Total
	11 (15.33)	9 (4.67)	20
	58 (53.67)	12 (16.33)	70
Total	69	21	90

Chi-square was 6.736
1 degree of freedom.

Table 23-B

Robbery and Forgery by Ethnicity

Ethnicity	Robbery	Forgery	Total
Indian	11 (16.07)	40 (34.93)	51
White	58 (52.93)	110 (115.07)	168
Total	69	150	219

Chi-square was 3.044
1 degree of freedom.

were compared to the number of robbery convictions. Table 23-C indicates that the obtained chi-square value, 1.769 was not the needed value of 3.841 for rejection of the null hypothesis of no difference at the one degree of freedom. The null could not be rejected. It is possible that there were minor or no differences between the numbers of white offenders convicted of these offenses.

Table 23-D contains the data used to test the null hypothesis of no difference in the numbers convicted of forgery and bad check offenses. At one degree of freedom the value needed to reject the null was, again, 3.841. The obtained chi-square value for Table 23-D was 15.092 and the null hypothesis was rejected.

The possible differences in the frequency of conviction for forgery or bad check offenses is probably related to the socio-economic conditions of the Indian offender's background. That is, the largest difference in Table 23-D stemmed from the higher frequency of Indian offenders convicted of forgery than was expected. This was perhaps due to the absence of checking accounts available to the Indian offender. When an Indian commits a "paper hanging" offense, it had to involve forgery since he did not have his own checks or own account on which to draw, nor did his wife or father have an account on which he could draw.

Table 23-E compares two different sets of crimes. In the first category were first and second degree murder, first and second degree assault and manslaughter, titled crimes of violence. In the second category were sex crimes, including rape, incest, lewd and lascivious and crimes against nature. The null hypothesis was that there is no difference between Indian and white offenders for convictions for crimes of

Table 23-C

Bad Checks and Robbery by Ethnicity

Ethnicity	Bad Checks	Robbery	Total
Indian	16 (18.97)	11 (8.03)	27
White	147 (144.03)	58 (60.97)	205
Total	163	69	232

Chi-square was 1.769
1 degree of freedom.

Table 23-D

Forgery and Bad Checks by Ethnicity

Ethnicity	Forgery	Bad Checks	Total
Indian	40 (26.84)	16 (29.16)	56
White	110 (123.16)	147 (133.84)	257
Total	150	163	313

Chi-square is 15.092
1 degree of freedom.

violence or sex crimes. The obtained value for chi-square from the table was 8.716, which at $P=.05$ and one degree of freedom was significant. The null hypothesis was rejected. The magnitude of the obtained chi-square value was mainly derived from the small number of Indians sent to prison for sex offenses and, conversely, the greater number of whites sent to prison for sex offenses. A possible explanation of the difference was not readily visible from Table 23-E, until the crimes composing the category of sex crimes was examined further. For the Indian sex offenders, two were convicted of lewd and lascivious acts and four of rape. For the white sex offender, however, 27 were convicted for lewd and lascivious acts, 20 for rape and six for crimes against nature or incest. Perhaps, then, part of the difference stems from differing cultural attitudes towards sex; the white offender manifesting more deviance as seen in the modal offense of lewd and lascivious acts.

Further examination of Table 23-E also shows that more than the expected number of Indians were convicted of crimes of violence. Crimes of violence tend to be crimes of youth, and the Indian prison population tends to be young which may shed some light on the differences observed.

In Table 23-F crimes of violence were tested against passive crimes that were oriented towards capital gains, in other words obtaining money by false pretenses, forgery, and bad check offenses. The null hypothesis was tested at the proper degrees of freedom and at the $P=.05$ level and significance was found; the null was rejected. Plausible reasons behind the difference noted was not readily available. Perhaps it was related again to the violent crimes of youth.

The null hypothesis of no difference between Indian and white offenders for sex crimes and all degrees of burglaries was tested using

Table 23-E

Crimes of Violence and Sex Crimes by Ethnicity

Ethnicity	Crimes of Violence*	Sex Crimes**	Total
Indian	35 (27.18)	6 (13.82)	41
White	81 (88.82)	53 (45.18)	134
Total	116	59	175

*Crimes of violence include murder 1 and 2, assault 1 and 2, and manslaughter.

**Sex crimes include rape, incest, crime against nature and lewd and lascivious.

Chi-square was 8.716
1 degree of freedom.

Table 23-F

Crimes of Violence (Murders and Assaults) and
Crimes for Capital (Obtaining Money by False
Pretense, Forgery, and Bad Checks) by Ethnicity

Ethnicity	Crime of Violence	Crime for Capital	Total
Indian	28 (19.25)	58 (66.75)	86
White	66 (74.75)	268 (259.25)	334
Total	94	326	420

Chi-square was 6.443
1 degree of freedom.

the observed and theoretical frequencies of Table 23-G. For this particular chi-square computation the obtained value was 8.131. Since one degree of freedom was involved, the null hypothesis was rejected according to the table of the distribution of chi-square.

The difference may be attributed to the low incidence of sex crimes among the Indians, as noted previously, and that the modal offense for Indians was burglary. With that in mind the next several chi-square tests and tables deal with other offenses and burglaries.

The first such table deals with all burglaries and the bad check offenses noted earlier. The null hypothesis once more was no difference between the groups. According to Table 23-H, the obtained value of chi-square for all burglaries and check offenses was 20.159. At the requisite degree of freedom and level of significance, this value allowed the null hypothesis to be rejected.

It is possible, thus, that differences do exist in the categories of Table 23-H. The possible factors behind the difference have been mentioned before, age and the isolation of the Indian offender from access to checks and checking accounts. As the second cell of the table shows, 16 Indian offenders were sentenced on check offenses and for this chi-square table about 35 had been expected.

In Table 23-I the categories auto theft and grand larceny were compared to all burglaries to make up the two by two chi-square table. The obtained chi-square value was 2.240. It was not great enough to reject the null hypothesis of no difference.

Convictions for thefts and burglaries may be similar for the two groups. Further interpretation from Table 23-I and data available in

Table 23-G

Sex Crimes and All Burglaries by Ethnicity

Ethnicity	Sex Crimes*	All Burglaries	Total
Indian	6 (14.67)	85 (76.33)	91
White	53 (44.33)	222 (230.67)	275
Total	59	307	366

*Sex crimes include rape, incest, crime against nature, and lewd and lascivious acts.

Chi-square was 8.131
1 degree of freedom.

Table 23-H

All Burglaries and Check Offenses by Ethnicity

Ethnicity	All Burglaries	Check Offenses	Total
Indian	85 (65.97)	16 (35.03)	101
White	222 (241.03)	147 (127.97)	369
Total	307	163	470

Chi-square was 20.159
1 degree of freedom.

Table 23-I

Auto Theft and Grand Larceny and All Burglaries
by Ethnicity

Ethnicity	Auto Theft & Grand Larceny	All Burglaries	Total
Indian	40 (47.00)	85 (78.00)	125
White	145 (138.00)	222 (229.00)	367
Total	185	307	492

Chi-square was 2.240
1 degree of freedom.

earlier tables and chapters shows that these two categories of offenses, when combined for both ethnicities, represented about 42 percent of the convictions and sentences to Montana State Prison. Nationally the pattern was similar, representing 46 percent of the court commitments for the same types of offenses.¹

The final chi-square table for offenses tested the null hypothesis of no difference with regard to forgery convictions and all burglary convictions. Table 23-J represents the frequencies used in the computations. Since forgery was a frequent offense both nationally and state wide for both ethnicities, great differences were not expected. The computation of chi-square obtained a value of 0.054 which did not allow rejection of the no difference null hypothesis just as expected. Thefts and burglaries constituted about 42 percent of the Montana inmate convictions, when these offenses were combined with forgery, they accounted for nearly 55 percent of the crimes for which the inmates were incarcerated.

In summary of the differences found in the offenses, the greatest differences were in property crimes where bad check charges were compared with all burglaries and forgery. Reasons for the difference have been noted. Other differences were seen in sex crimes when matched with burglaries and crimes of violence. Another difference was noted when the crimes of violence were matched with crimes for capital gain. It is apparent that the major emphasis in Indian criminal deviance was within the region of property crimes and the crimes of youth.

¹Characteristics of State Prisoners: 1960, op. cit., p. 52.

Table 23-J

Forgery and All Burglaries by Ethnicity

Ethnicity	Forgery	All Burglaries	Total
Indian	40 (41.03)	85 (83.97)	125
White	110 (108.97)	222 (223.03)	332
Total	150	307	457

Chi-square was 0.054
1 degree of freedom.

Continuing on to other items, Table 24 presents the data used to generate the chi-square statistic to test the null hypothesis of no difference in the length of the sentence that the Indian and white offenders received. It is a popular notion when considering minorities in the United States to assume that members of the minority groups almost without fail receive stiffer, that is longer, sentences to prison. When the fifth steel gate clangs shut behind the Indian offender it is often assumed that he will be there for a long stay. However the obtained chi-square statistic of 3.959 was, though barely, significant at one degree of freedom and at the proper level of significance and the null hypothesis must be rejected. In broad terms this means that there was a difference between the sentences that Indians and whites were receiving. But were Indians getting longer sentences? Examination of the table shows that the greatest contribution to the difference in the sentence lengths was from the reduced frequency of Indians who received sentences of over five years. Contrary to popular notions, the difference in sentence length was in such a direction that the Indian had been given a shorter prison sentence.

Recalling that the Indian offenders were younger, that their offenses were often thefts, burglaries or forgeries, and that many had never been granted a probation sentence (88 Indian offenders violated a probation or suspended sentence), it is possible that the difference in Indian sentences may be due to the absence of the equivalent white offenders in prison for five years or less. In other words, the white offenders in prison had longer sentences because they were the worst risks in the judicial system. The young white was not a statistic in Table 24

Table 24

Length of Sentence in Years by Ethnicity

Ethnicity	1-5 Years	Over 5 years	Total
Indian*	213 (201.38)	45 (56.62)	258
White**	669 (680.62)	203 (191.38)	872
Total	882	248	1130

*Indian does not include 1 unknown.

**White does not include 15 with life sentences, or any whose sentence was greater than the maximum Indian sentence, 36 years.

Chi-square was 3.959
1 degree of freedom.

because he never came to prison but was placed under the supervision of parole and probation officers within a community. Such was not the case with the Indian.

Not only does Montana State Prison release inmates on parole sooner than 98 percent of other state prisons across the nation, but parole is granted to the vast majority of the prison population.¹ Table 25 represents the number of inmates who were released on parole or who served their sentence until their mandatory release date. The calculated chi-square value used to accept or reject the null hypothesis of no difference between the ethnic groups in receiving a parole or mandatory release was 1.646. The needed value of chi-square to effect rejection of the null for this table was 3.841. The calculated value was not sufficient to reject the null. There appears to be no or little difference between the two groups on which offenders get a parole and which offenders sit their sentence out in prison.

When so many of the offenders were back on the streets so soon, it was interesting to examine how well they performed under the regulations imposed on parolees. Table 26, outlining the disposition of parolees by ethnicity, was constructed to test the null hypothesis that there is no difference in how the two groups managed to abide by the limitations placed on parolees, and how many failed and were returned to prison. At $P=.05$ and three degrees of freedom, the value of chi-square must be 7.815 to be significant. From Table 26 the obtained value of chi-square was 16.821. The null was rejected.

¹Characteristics of State Prisoners: 1960, op. cit., p. 28.

Table 25

Parole or Mandatory Release From MSP by Ethnicity

Ethnicity	Paroled	Mandatory Release	Total
Indian	206 (212.95)	53 (46.05)	259
White*	742 (735.05)	152 (158.95)	894
Total	948	205	1153

*White does not include 1 unknown.

Chi-square was 1.646
1 degree of freedom.

Table 26

Disposition of Parolees by Ethnicity

Ethnicity	Parole Revoked	Parole Completed	Parole Continues	Parole to Detainer	Total
Indian*	106 (81.25)	50 (63.88)	43 (51.86)	2 (4.01)	201
White**	259 (283.75)	237 (223.12)	190 (181.14)	16 (13.99)	702
Total	365	287	233	18	903

*Indian does not include 5 unknowns, nor 53 mandatory releasees.

**White does not include 40 unknowns, nor 153 mandatory releasees.

Chi-square was 16.821

3 degrees of freedom.

The significant difference between Indian and white in the disposition of their parole was derived basically from the greater number of Indian failures on parole (those who have had their parole revoked) and the higher number of whites who succeed without revocations. There were several factors involved in the revocation of the Indian offender's parole. One factor was the rules of parole. Table 18 evidenced a large number of the Indian offenders had a problem with alcohol indicated and the parole rules of Montana specify restraint in the use of "...beer or intoxication liquors." Additionally the rules stated that the offender was restricted to a certain parole district and could not leave that district without permission from his parole officer. The district was often far away from the area called "home" by the Indian offenders and many violate their parole by absconding the district to visit friends and relatives in other districts without securing permission from the Board of Pardons'. The rules also stated that the parolee must "...make proper efforts to find and keep employment..."; something that a young, unskilled, undereducated, Indian parolee finds difficult to abide by. Another factor in the difference in parole revocations stems from the youthfulness of the Indian offender in Montana. As Glaser points out, "regarding the question of age, as a rule of thumb the older a man is when released from prison the less likely he is to return to crime,"¹ and "...that the younger a prisoner is when first arrested, convicted, or confined for any crime, the more likely he is to continue in crime."²

¹Glaser, op. cit., p. 18.

²Ibid., p. 19.

Table 27

Duration of Successful Parole for Parole Violators by Ethnicity

Ethnicity	0-3 Days	4-30 Days	31 Days 3 mo.	4-6 mo.	7-12 mo.	Over 12 mo.	Total
Indian*	5 (4.94)	13 (11.04)	31 (21.78)	25 (24.39)	22 (25.85)	10 (18.01)	106
White**	12 (12.06)	25 (26.96)	44 (53.22)	59 (59.61)	67 (63.15)	52 (43.99)	259
Total	17	38	75	84	89	62	365

*Indian does not include 5 unknowns.

**White does not include 40 unknowns.

Chi-square was 11.841
5 degrees of freedom.

The final item to which the null hypothesis of no difference was applied was to the duration of time that parole violators were able to remain out of prison before having their parole revoked. Table 27 presents this data, and at five degrees of freedom a chi-square of 11.070 was needed to accomplish rejection of the null hypothesis. Computations of the chi-square value from the table yielded a chi-square value of 11.841. The null hypothesis was, therefore, rejected.

There indeed may be some differences between the Indian and whites in the duration of their successful parole period. The difference was seen in two categories in the table. The first was in the high revocation of paroles for Indians from the end of the first month out of prison to the end of the third month out of prison. The second was, that more whites make a "good" parole for a year or more prior to violation. The height of Indian parole violations during the second, third, and fourth months is enigmatic. Since about 80 percent of the parole violations involve technical violations of the rules of parole it was probably during this period that unemployment, lack of funds, drinking and the patience of the parole officer were most conducive to violations.

Table 28 summarizes the results of the chi-square tests that have been made for these 16 items of comparison. Statistically significant differences were found in 12 tables, not including all the chi-square tables used in examining the types of offenses. Three items were not significant: The type of military discharge, the known drug use, and whether an offender was paroled or served his sentence to its mandatory discharge date.

Table 28

Summary of Items Tested

Item	Statistically Significant Differences, $P=.05$
1. Marital status at intake	Yes
2. Number of dependents	Yes
3. Education completed	Yes
4. Military service record	Yes
5. Type of military discharge	No
6. Known drug use	No
7. Alcohol problem indicated	Yes
8. Age at first juvenile offense	Yes
9. Total number of arrests	Yes
10. Age at first felony	Yes
11. Total number of felonies	Yes
12. Offense	Some
13. Length of sentence	Yes
14. Paroled or mandatory discharge	No
15. Disposition of parole	Yes
16. Duration of successful parole	Yes

The intent of the chapter was to seek an answer to the question of similarity between two groups of offenders in Montana State Prison. Testing the null hypothesis of no difference, it was rejected for 12 of the 16 comparisons made. It appears, then, that even though both whites and Indians go through the same machinery to get into prison, they were not similar when they get there. Persons that the state's judicial system were labelling legally deviant were not the same.

The conclusion to chapter three gave a general basis for the existence of the differences as pointed out by district court judges. The judicial system reacts differently towards each group on the basis of which person will be a "better" or "worse" risk on probation or in prison. The "sieve effect" of justice sorts the offenders. The statistical comparisons run here indicated that more Indian offenders were found in prison who exhibited traits considered to be reflections of a "bad" risk for alternatives to prison. The tests made in this study show that more Indians than would be expected by chance were single. More Indians had few or no dependents. More Indians never completed high school. More Indians never were in the armed forces. Many more Indians had a problem in handling alcohol than were expected. More Indians had some sort of juvenile record, and juvenile offenses increased until the delinquents were old enough to be imprisoned at age 18.¹ More Indians were becoming felons at younger ages than whites.

On the other hand, more whites in prison exhibited characteristics that made them the worst risks in the judicial system. For

¹For certain offenses, such as murder, an offender may be sentenced to prison at age 16 in Montana.

example, the white in prison had more arrests in his background. Whites in prison had been in prison more often than Indians, which also reflected in the older age of the white offender. Whites in prison were also given longer sentences. They were the worst risks.

The administration of parole was equitable. There were no differences between the two groups released from the institution on parole status. Differences that existed after release point again to the possible instability in the lives of the offenders. More of the Indians failed to complete a parole without violation and were returned to prison. They also failed on parole sooner than the white parole failure.

Differences between the two groups seem to exist. The differences point out those traits that a judicial system reacts towards in selecting persons to process from arrest to parole. The subsequent chapter brings together the data from chapters three and four to summarize, conclude and recommend.

Chapter 5

Summary, Conclusions, and Recommendations

The purpose of this study was to examine in detail the American Indian in prison; an area that has remained unstudied. In order to understand how an Indian became criminal, it was necessary to explain how certain behavior need not be deviant in itself but can become deviant in the eyes of others. When someone was selected as a deviant for emitting some behavior, the audience that selects was also judging the person on the basis of other traits he possessed. It was pointed out that the Indian was in an odd situation in that his behavior can only be labelled deviant if the behavior occurs off a reservation, except as provided for by statute as was the case of the Flathead Reservation. The predicament of the Flathead illustrated the point well, for the county which sent the most Indians to prison was Lake County-the Flathead Reservation. Additional data from a study of probationers indicated that most of the Indians who received probations were from Lake County and committed crimes in the city of Polson, Lake County. These acts may not have been considered criminally deviant if the state did not have concurrent criminal jurisdiction over the Flathead Reservation. The history of jurisdiction over the tribes of Indians was also outlined in this study, limiting the study to offenders at the state level of authority.

Once the locus of activities relating to Indians and Indian offenders was fixed, the genesis of the study done for the Board of Pardons was sketched. The ten week study recorded data for multiple variables on 1,201 individuals. From this data, 34 variables were selected and defined to develop a picture of the Indian offender in the state prison. Perhaps the most significant of the 34 variables indicated several major factors in the lives of the Indian offenders. The first of these factors, pointed out by district court judges, illustrated instability in the lives of the offenders through alcoholism, early delinquency, lack of family ties (wife and dependents), and dropping out of school by the ninth or tenth grades. Another factor was the youthfulness of the Indian offenders, a key factor according to Glaser.¹ Not only had the offenders been youthful in their first delinquency, but the majority were going to prison before their twenty-second birthday. A third major factor illustrated by the study of the Indian offenders was the workings of the Montana judicial system. That is, the working of the system was seen through the 96 percent of the Indian offenders who plead guilty and who did not have a jury trial. The system was seen in the relatively short sentence (median 3.71 years), early release on parole (9.9 months after entering prison), failure of 51 percent of the parolees to complete parole, and the lack of females processed by the legal system.

Once the traits of the Indian were understood, he was compared to the white in the same prison to see if they were similar. Results of the tests showed that for the most part the Indian offender was not the same

¹Daniel Glaser, Adult Crime and Social Policy (Englewood Cliffs, N.J.: Prentice Hall, Inc, 1972), pp. 1 ff.

as the white offender.

Differences existed for at least 12 of the 16 variables tested, as illustrated in Table 28. The conclusion must be that the two groups of offenders are different. It was pointed out that the differences seemed to be related to the judicial process whereby some offenders were selected as better suited for probation and others better suited for prison.

To help make better sense of this conclusion several district court judges were interviewed simply to get their opinions and reactions towards the Indian offender. The statements they made were only opinions but seemed to substantiate the notion that differences between the offenders may exist resulting from the use of probation in Montana.

The judges pointed out other interesting items relating to this study as well. First, it was the opinion of a judge that he doubted if he has ever prosecuted a full blooded American Indian. His idea was that to define who was Indian was difficult. Persons of very little Indian heritage considered themselves Indian for any benefits it may accrue them. For example benefits that may be found in government programs for Indians or payments made to tribes by the government.

Then too, the judges interviewed felt many of the Indians were in trouble because of the "Welfare state" on the reservations. Their feelings were Indians get everything for nothing and never have to work. This results in unstructured societies and alcoholism and prison. Pointing to alcohol, the judges expressed the idea that liquor presented a problem due to the lack of work in the "welfare state" and that alcohol replaced the use of drugs. The low known use of drugs, they felt, was a

correct representation of the Indian. Alcohol was easier and cheaper to obtain on the reservation.

It was indicated by some judges that the Indian in prison was not really a criminal. He was, rather, the result of a "messed up" life who can not be changed. Prison sentences served to protect society from them for awhile at least. This, it was added, was the reason for the short sentences Indian's received. They indicated that parole was granted too soon and one judge thought it might be beneficial to hand out minimum sentences so the offender would not become eligible for parole so quickly. Failure on parole was due not only to the short time spent in prison, but to the instability of the offender's lives as well.

The differences between the Indian and the white offenders, the judges thought, as opinion only, were due largely to unconscious selection by the judges. In general terms, one judge said, they make selections on the basis of those offenders "who don't fit the slots for being better risks for probation". Perhaps the differences found in this study were the result of this basis for selection.

From the work put into this study and from the results of the tests made, it was possible to suggest and recommend several things. The first was to suggest this study is representative of problems found in the rural west and can be an aid in the further examination of similar problems in similar regions.

Since it appears that the Indian offender was different from the white offender, it was suggested that a separate system of judicial action and penal operations be established for the American Indians on or off the reservation. The suggestion of a separate system for Indians

was not new. This study can be of assistance in the establishment of such a system enabling people to know what to expect by being armed with the idea that Indian offenders may differ from the white. It has also been suggested that Indian parole and probation officers be created to assist the Indian on parole. In light of the high failure rate of Indians on parole, such action may indeed help.

This study pointed out a need for further research not only on the Indian offender and his differences from whites, but on the system of administering probations versus prison sentences in Montana as well. Data has been collected on probationers in the state. Its analysis is necessary.

The study further indicated the need for greater research on the female offenders of the state and the apparent lack of facilities for her care.

Finally, the data used in the study of the Indian offender in Montana indicated that there was an over representation of Indians in the judicial system from the reservation under concurrent criminal jurisdiction with the state of Montana. Perhaps many of the offenders from this reservation would not be offenders if the tribe, not the state, had jurisdiction. Termination of concurrent criminal jurisdiction was recommended.

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